KENTUCKY MUNICIPAL STATUTORY LAW

(Revised 2002)

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FOREWORD

This revision of *Kentucky Municipal Statutory Law* incorporates the statutory enactments made by the 2002 General Assembly. The bulletin also cites selected court decisions and opinions of the Attorney General that assist in the interpretation of the statutes.

This bulletin is to help diligent city officials understand the laws governing the operation of their cities.

It is **not** a replacement of the actual language of the *Kentucky Revised Statutes* but is intended only to be a convenient reference regarding the organization, structure and function of city governments. The LRC also publishes many other reports of interest to local officials, most of which are cited in the bibliography to this bulletin. I am proud that LRC is able to provide these publications to city officials.

This latest revision was prepared by Jamie Franklin, Joe Pinczewski-Lee, and Cheryl Walters.

Robert S. Sherman
Director

Frankfort, Kentucky
February 2003

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CHAPTER I

INTRODUCTION

Use of This Publication

This report describes the statutory duties of elected city officials and the organization and powers of city government. It should be emphasized that the statutes pertaining to cities are numerous and complex and that many details have of necessity been omitted. For this reason, this publication should be used as a guide to and not a substitute for the *Kentucky Revised Statutes*.

Reading and understanding the *Kentucky Revised Statutes* is often a challenge for lay people and attorneys as well, but the task will be easier if some basic points are kept in mind. The reader should be aware, for example, of the statutory definitions of the words "may" and "shall." In the context of the statutes, "may" permits while "shall" mandates. These terms and a number of others are defined in KRS Chapter 446. Chapter 446 also contains other information essential to understanding the statutes. A prospective reader of the *Kentucky Revised Statutes* is also cautioned to make sure that the law consulted is the current version by checking the pocket supplement in your statute books, the advance services and interim supplements provided by your publisher, or the latest edition of the *Acts of the General Assembly*.

Also, the Legislative Research Commission has established an Internet site which contains information regarding recent legislative action and other useful information about the legislative branch. The Internet site is: http://162.114.4.21/home.htm .

Beyond the sheer number of statutes, their complexity also poses a problem. Many times there is no clear-cut meaning to a statute granting a power or assigning a duty. The law is subject to differences of opinion and continuing legal interpretation. It should therefore be clear that this bulletin cannot be taken as a substitute for legal counsel, the advice of the Attorney General, or the findings of the courts.

Each year many city officials and citizens seek the written opinions of the Attorney General on questions of law pertaining to the powers and duties of cities. The Attorney General's interpretations of various statutes have been cited throughout this book. While it must be remembered that such opinions are not law nor legally binding, they are important as researched and informed views on the meaning of the statutes.

Court rulings have also been cited throughout the following pages and the rulings of the court are law until altered or overturned by another court. The reader should be advised, however, that the inclusion of court cases has been selective and does not represent an exhaustive compilation of the cases relating to each statute. Therefore, whenever a particular statute is in question, the reader should check for recent court rulings relevant to that specific statute.

City Government

The American federal system is composed of three levels of government: national, state and local. It is estimated that there are approximately 79,000 governmental units in the United States.[1] Kentucky local government consists of counties, cities and special districts. While the distinctions have become blurred in recent decades, traditionally counties and cities have served very different purposes. Counties are territorial entities, in that the entire state is divided into 120

counties. Counties were organized to carry out on a local level such state functions as justice, tax assessment and road maintenance.

On the other hand cities are voluntarily created entities. A city comes into existence when the residents of an area petition the Circuit Court to incorporate a defined area as a city. A city is incorporated "in order to provide urban services...demanded by the denser population, and in order to carry out the more sophisticated regulatory and police measures that an urban population would demand."[2] Cities accordingly possess far broader legislative powers than counties. "Historically counties...have existed primarily to perform state functions...and to provide governmental services to rural areas; whereas municipalities have existed to provide the governmental needs of the more urban areas. Municipalities have been delegated vast authority to exercise the police power...and consequently the range of municipal functions greatly exceeds that of county functions."[3]

Cities perform the functions and provide the services which have become essential to the quality of life in America, and upon which we depend for health, safety and welfare. The services commonly provided by cities are: police protection, fire protection, ambulance service, hospitals, garbage collection, streets, sewers, flood protection, electricity, gas, water, parks and recreation, cable television and libraries.

To finance these services, cities levy taxes and fees upon the property, individuals and businesses located within the city (see Chapter VI). To administer the government, officials are popularly elected by the residents of the city. In Kentucky all cities have a mayor and a legislative body composed of a varying number of members. The functions of the elected officers depend upon the form of government under which the city operates. In Kentucky cities may operate under one of three governmental plans: mayor-council/alderman, city manager, or commission (see Chapter V), or the city may merge with the county and form an urban-county or charter county government (see Chapter IX).

There is no inherent right for cities to exist and thus they are totally creatures of state law. A city's powers, organization and very right to exist derive exclusively from laws enacted by the state legislature. Since the adoption of the 1891 Constitution, Kentucky's body of municipal statutory law was most significantly revised in the 1980 Session of the General Assembly. The most fundamental change was the granting of broad home rule powers to all Kentucky cities (see Chapter IV). Home rule made possible several other changes. First, it did away with the necessity for statutes to grant specific authority to perform particular acts or functions. Second, it permitted statutes relating to cities to be drafted more broadly, allowing cities greater discretion. Third, because statutes could be drafted generally, city laws may be more uniform. Fourteen years later, the 1994 General Assembly and the public further established the concept of "home rule" in Kentucky law with the adoption of Section 156b of the Kentucky Constitution which specifically authorized the General Assembly to permit cities to exercise "home rule". This was seen as a reinforcement to a concept which had not yet been fully embraced by the local government legal community which had been somewhat hesitant to venture into uncharted waters. Together, these changes have permitted cities greater flexibility and authority in handling their local affairs.[4]

CHAPTER II

CONSTITUTIONAL PROVISIONS

History

The present Kentucky Constitution dates from 1891 and is the Commonwealth's fourth constitution. The first Constitution, framed in 1793, was based closely upon the federal Constitution. It was short and made no mention of local governments. It provided for an automatic constitutional convention within seven years. That convention was held in 1799 and produced the second Kentucky Constitution, which was a slightly longer reworking of the 1793 Constitution and which also failed to mention units of local government.

The 1850 Constitution was drafted to a large extent to fix more firmly the institution of slavery within the law of the Commonwealth. It was also the first constitution to contain provisions relating to local government. Article II, Section 5, permitted the General Assembly to grant cities separate representation upon attaining a certain population level. Article VI, Section 6, stated that officers for towns and cities were to be elected for such terms and in such manner and with such qualifications as may be prescribed by law.[5]

The fourth, and present, Kentucky Constitution was drafted by the 1890 constitutional convention. The major innovation of the 1891 Constitution was the abolition of "special legislation" in Sections 59 and 60. This provision had a profound effect upon municipal legislation. Previously cities had operated under specific charters granted by the General Assembly. Additionally, individual cities would request specific acts relating only to their cities. "Because such legislation could be used to benefit the friends or harm the enemies of a legislator, there developed out of this system...a great deal of favoritism, corruption and confusion."[6]

The abolition of special legislation posed a serious problem for cities. It was recognized that there needed to be some way to address the very different problems of the various cities within the Commonwealth. As an alternative to special legislation, the 1891 Constitution adopted a classification system which assigned cities to one of six classes. The classes were defined by population, and the legislature was required to enact uniform legislation with respect to any one class. All charters specifically granted prior to the new Constitution were revoked.

Unfortunately for cities, the delegates to the convention were overwhelmingly of rural backgrounds and in general had a great distrust of cities. The Committee on Municipalities, for example, which would be expected to be heavily weighted with urban delegates, had only five urban representatives out of a total of eleven. In the debates during the 1890 Convention, one delegate said of cities that "Every right-thinking and intelligent patriot will at once see that there is more extravagance and fraud in the government of cities than in every other department of political life."[7] One can see even more clearly the disrepute in which cities were held by the delegates when one considers that this statement was made not long after "Honest Dick" Tate, the state treasurer, had absconded with the entire state treasury to points unknown. City government was considered to be worse!

Because of the perceived or actual corruption of cities, the framers sought to write into the constitution a number of inviolate restraints upon the powers which could be possessed by cities. As early as 1937, when Kentucky was still very much a rural state, one writer bemoaned the Constitution as a "straitjacket over cities."[8]

Cities and the Constitution

As previously noted, under Kentucky's first three Constitutions, the General Assembly exercised total control over the creation of cities, counties, and other units of local government and could adjust the boundaries of existing ones without limitation. Further, those Constitutions contained no framework for organizing, financing, or managing local government as a whole. Instead, the General Assembly was permitted to enact "special" legislation to meet an individual local government's needs or desires without restriction and without considering whether other local governments could be similarly aided or even harmed by the legislation. This provision resulted in favoritism and corruption and is often cited as the major reason for calling the 1890-91 Constitutional Convention to consider changes in the Constitution, including sweeping reforms in the area of local government when compared to the three previous Constitutions.

All local units of government (cities, counties, special districts, and school districts) are now legal subdivisions of the state. They derive their powers from the state and can do only those things permitted by the Constitution and laws passed by the General Assembly. In addition to prohibiting the use of "special" or "local" legislation, the 1891 Constitution established six classes of cities, based on population, so that all laws relating to a particular class of city would apply equally to all cities within the same population class. It provided for the election or appointment of city and county officers, established their qualifications, and prohibited them from having conflicts of interest. The General Assembly retained its authority to create new cities, counties, and other units of local government, but its ability to adjust county boundaries was somewhat limited (Section 156). Also included in the 1891 revision were limits on local governments' maximum property tax rates and the amount of debt they may incur, other requirements regarding debt capacity and debt payment, and the authority to grant tax exemptions to businesses to encourage them to locate in the area (Section 157 and 158).

In the 1970's and 1980's, the General Assembly enacted laws granting cities and counties "home rule." That is, cities and counties may govern local affairs as they see fit, so long as their actions further a governmental purpose and do not conflict with the Constitution or state law. While courts have upheld this broad grant of power to local governments by the General Assembly, "home rule" was not specifically authorized by the constitution until a 1994 constitutional amendment was adopted which constitutionally authorized the General Assembly to extend this authority to local governments.

Most of the 28 sections of the Kentucky Constitution relating to local government have remained largely unchanged since they were adopted in 1891. As local governments are called upon to respond to local and regional problems that are increasingly complex, particularly economic issues, some contended that pertinent constitutional provisions were needed for modernization. This was to be done by updating some of the strict limits and requirements regarding local governments in the Constitution, and permitting the General Assembly to establish limits by law, so they can be adjusted as necessary in response to changing conditions.

Several attempts to change the Constitution in areas relating to local governments have been undertaken through the years. While some proposals offered sweeping, comprehensive reforms, only small specific reforms have been successful. That is until the 1994 constitutional amendment mentioned above proposed a major revision in the way that local governments can be structured, organized, financed and operated. A brief summary of the constitutional changes follows:

City Government and Municipal Classification

Section 156 of the 1891 Constitution divided cities into six classes, based solely on their population, and specified that all cities of the same class had the same powers and were subject to the same restrictions that were established by law. The classification system permitted some distinction in the laws governing different classes of cities but prevented "special" or "local" legislation which would affect only certain cities within a particular class. Section 156 also required the General Assembly to specify by law how city governments would be organized and governed.

The 1994 local government constitutional amendment repealed Section 156 and replaced it with two new subsections. New Subsection 156a allows the General Assembly to specify by law how cities may be created, consolidated, merged, and dissolved, and how their boundaries may be changed. The General Assembly is permitted to pass laws regarding the types of governments cities may have and their functions and officers. The General Assembly is permitted to create new classifications of cities based not only on population, but also by considering cities' tax bases, forms of government, geography, and other reasonable characteristics. All laws passed by the General Assembly regarding cities of the same class must still apply uniformly to all cities within the same class. The current city classification system and class assignments will remain in effect until the General Assembly changes them based on some new classification criteria. In addition, new Subsection 156b establishes a constitutional foundation for the city home rule statutes enacted by the General Assembly in 1980. It authorizes the General Assembly to permit cities to exercise any power and perform any function within their boundaries that is in furtherance of a public purpose of a city so long as it does not conflict with a constitutional provision or statute.

Limits on Debt Capacity

Section 157, which was amended, had established the maximum tax rates that counties, taxing districts, and cities of different populations could impose. It also had prohibited a local government from incurring debt in a given year which would exceed its income and revenue for that year, unless two-thirds of its voters agreed to let the local government enter into debt for a longer period. In a similar fashion, Section 158, also amended, had established the maximum amount of indebtedness which local governments could incur.

The amendment of Section 157 deleted the voter approval referendum requirement, which stipulated that before a local government could incur more debt in a given year than could be paid off with the income and revenue that the local government would receive during that year, two-thirds of the voters would have to agree to allow the local government to pay off the debt over a longer period than that one year. This relaxed rule on incurring debt permits a local government to finance public projects for more than one year without having elections to approve them. Interest rates on loans made for a period of years are generally lower than those charged for "annual appropriation" debt (that is, debt on a year-to-year basis), which should result in lower debt service costs for a local government that chooses to finance public projects over time. Also, because the "2/3 voter approval" requirement made it almost impossible to issue general obligation debt, local governments had been pushed into utilizing "creative" financing mechanisms, such as industrial revenue bonds, to finance long-term projects. Local governments often created public holding corporations or utilized annually renewable lease-purchase

agreements to avoid the aforementioned debt issuance requirements. The constitutional changes which have been adopted will eliminate the need for local governments to utilize these sorts of entities, thus potentially saving even more local dollars.

Section 158 had previously set limits on the amounts of debt that local governments could incur. The limits were based on a percentage of the value of the taxable property within the local government area, the class of city to which the municipality had been assigned and the population of the city. The old language also contained outdated provisions relating to indebtedness of local governments that existed when the Constitution of 1891 was drafted.

The new language in Section 158 retains the debt limits for local governments based on assessed taxable property values but will require those debt limits to be based on population alone, rather than class of city. The debt limits for cities with populations of 15,000 or more will be limited to 10% of their assessed taxable property value; it will be 5% for cities of 3,000-15,000, 3% for cities of less than 3,000, and 2% for counties and other taxing districts. In addition, the General Assembly is authorized to establish by statute other additional limits on local government indebtedness, subject to the limits and conditions established by the Constitution.

Balanced Budget Requirement

As mentioned earlier, local governments previously could not incur debt in one year in an amount which would exceed the income and revenue which would be received in that year, unless the voters approved a higher debt capacity (bonded debt, for example). This language in essence forced local governments to adopt a balanced budget unless the voters had said otherwise. However, the amendment deleted that language, and instead, inserted a new constitutional section (Section 157b) which requires every city, county, and taxing district to adopt a budget prior to each fiscal year that shows the expected revenues and expenditures for the fiscal year and prohibits a local government from spending any funds in excess of the expected revenues for that fiscal year. A local government may amend its budget during a fiscal year, but the revised expenditures may not exceed the revised revenues. “Revenues” means all income received by the local government from any source, including unencumbered budget reserves carried over from the previous fiscal year. “Expenditures” means all funds paid out for expenses of the local government during the fiscal year, including any amounts needed to pay the principal and interest due during the fiscal year on any debt incurred.

Constitutional Provisions Governing Structure and Finance

As mentioned, the 1994 local government constitutional amendment did repeal Section 156, which set out the classification of cities. But, because all current classification systems remain in effect until changed by legislative action, the following information is still valid until changed by state statute.

Classes of Cities

Section 156 divides cities and towns into six classes, based upon the population of the city. The population ranges are set out in Table 1.

TABLE 1:

Class Population Limits

Class	Population
First	100,000 or More
Second	20,000 to 99,999
Third	8,000 to 19,999
Fourth	3,000 to 7,999
Fifth	1,000 to 2,999
Sixth	999 or Less

In order to better define the reclassification process, the 1986 General Assembly enacted legislation requiring a city requesting reclassification to do so by submission of a certified resolution and to support its request by the most recent Census Bureau estimates. If the census information is disputed the city must submit an affidavit supported by other population information, such as annexation records, PVA records, or door-to-door counts. Population information submitted shall be made part of the official record of the General Assembly (KRS 81.032-81.036).

Municipal Officers

The Constitution does not explicitly mandate the existence of particular officers in cities, although Section 160 implies that a mayor or chief executive and a legislative body made up of more than one member are required.

Election and Term. Section 160 provides that mayors of cities of the first three classes and the members of legislative bodies of all cities are to be elected by the qualified voters of the cities. Mayors or chief executive officers of cities of the fourth, fifth and sixth classes may be elected or appointed. The terms of mayors shall be four years or until their successors qualify, while the terms of members of legislative bodies shall be two years. The section does not permit legislative body members to hold over in office because, unlike mayors, they are to serve a definite term of two years and have no right to stay in office "until their successors qualify." Section 160 goes on to provide that no mayor or chief executive of any city of the first or second class may succeed himself after serving three successive terms in office. No fiscal officer of such cities may serve more than one term. "Fiscal officer" means an officer whose chief duty is the collection or holding of public monies, but shall not include auditors or assessors.

If any city of the first or second class is divided into wards, the members of the legislative body shall be elected from the city at large, but an equal proportion shall reside in each ward; if any city of the first three classes has a bicameral legislature the members of the smaller body shall be elected at-large. While a bicameral legislature is permitted by the Constitution, there are no statutes which permit creation of such a body. Section 160 empowers the General Assembly to create other municipal officers and to provide that they be elected or appointed. Any officer so created shall have a term of four years.

Section 152 specifies that vacancies in offices are to be filled by appointment. The appointee shall serve until the next regular city, county, district or state election, unless such election takes place less than three months after the vacancy occurs, in which case the appointee shall serve

until the second succeeding annual election. The Section 167 requirement that all city officers, except members of the legislative body, be elected only on odd years does not apply to special elections to fill vacancies.

Section 167 provides that all elected city officials are to be elected at the general election in November. Members of legislative bodies may be elected on either odd or even years so that they may serve staggered terms, if desired. All other officers are to be elected on odd years.

Section 236 authorizes the General Assembly to fix the date on which officers take office, unless otherwise fixed in the Constitution. For municipal officers that date is fixed by Section 167.

Qualifications. Section 160 provides that the General Assembly may set qualifications for all officers and the manner in which they may be removed and how vacancies are to be filled. A number of provisions, some applicable to all state officers, and others only to local government officers, set out various qualifications and disqualifications for public office.

Section 165 states that municipal officers may not be state officers or members of the General Assembly. One person may not simultaneously fill two municipal offices.

Section 228 sets out the following oath which must be taken by all officers prior to assuming the duties of their offices:

> I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of...according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

It is to be noted that because the oath requires an officer to state that he is a citizen of the Commonwealth, a statutory requirement that an officer must take an oath of office is tantamount to requiring that he be a resident of Kentucky.

Section 234 requires all municipal officers to reside within the city and to keep offices therein where required by law.

Section 237 prohibits a person holding or exercising an office of trust or profit under the United States or any foreign power, or a member of Congress from holding a state office.

Section 239 disqualifies a person from holding an office if he has participated in a duel or acted as a second therein.

Disqualifications also result if any officer profits through the use of public funds (Section 173) or if any officer accepts free passes or reduced rates not common to the public on any common carrier (Section 197).

Section 68 provides that all civil officers are subject to removal by impeachment before the General Assembly. Section 150 disqualifies any person from public office if, to serve in such office, he has promised money or anything of value. Any person convicted of a felony or high misdemeanor is also disqualified from public office.

Section 45 makes any person who has served as a city collector of taxes ineligible to serve in the General Assembly unless he has received a quietus from the city at least six months prior to the election.

Compensation. Section 246 limits the compensation which may be paid to city officers. Mayors of cities of the first class are limited to a total annual compensation of $12,000, while all other municipal officers are limited to $7,200 per annum. The meager compensatory amounts of this section have been adjusted by the courts in two lines of cases.

In Matthews v. Allen, popularly known as the "rubber dollar" case, the Court of Appeals interpreted the monetary limit not as an absolute limit, but as a limit which "stretches" as the purchasing power of the dollar decreases (or increases, unlikely as that might seem).[11] Therefore, the actual compensatory limit of an officer is the amount of money currently required to equal the purchasing power of $7,200 or $12,000 in 1949 (when the amendment to Section 246 was adopted). The consumer price index is the guide employed and the Department for Local Government annually computes the current level. The formula, as approved by the office of Attorney General, for calculating the current value of the constitutional limits is as follows:

Current Consumer

$$\frac{\text{Price Index}}{100} = \frac{X}{\text{Constitution limit}},$$ X being the maximum compensation limit.

As calculated by the Department for Local Government, as of February, 2002, the $12,000 limit equals $88,941 in today's dollars, and the $7,200 limit equals $53,365.

Even with the "rubber dollars" the limit of Section 246 might pose a hindrance to the hiring of professional specialists to work in government. To remedy that potential problem, the Court of Appeals in *Board of Education of Graves County v. Deweese* narrowly defined "officers," as used in Section 246, to mean only those officers specifically mentioned in the Constitution.[12] In the case of cities, therefore, only mayors, or chief executives, and members of the legislative bodies are subject to the compensation limit.

Section 161 prohibits the compensation of any city, county, or municipal constitutional officer from being changed after his election or appointment or during his term. It also prohibits a term from being extended. While Section 161 prohibits compensation from being changed during the term of an officer, it has been construed not to prohibit cost-of-living "adjustments," since, under the reasoning of *Matthews v. Allen*, a cost-of-living raise is not actually an increase in compensation.[13]

Section 235 duplicates Section 161, in that it prohibits an officer's salary from being changed during the term for which he is elected. In addition it authorizes the General Assembly to establish what deductions may be imposed for neglect of duty (see discussion of Section 161 relative to salary adjustments).

Taxation

Section 157 establishes the maximum tax rates for units of local government. The maximum rates for other than school purposes are presented in Table 2.

TABLE 2:

Maximum Municipal Tax Rates

Type of Government	Population	Maximum Rate
City	15,000+	$1.50 per $100 taxable property
	10,000 - 14,999	$1.00 per $100 taxable property
	Up to 9,999	0.75 per $100 taxable property
Counties & Taxing Districts		0.50 per $100 taxable property

Section 169 provides that unless otherwise specified by law the fiscal year shall begin July 1.

Section 170 exempts the following property from taxation:

(1) Public property used for public purposes;
(2) Non-profit burial grounds;
(3) Real property, owned and occupied, and tangible and intangible personal property owned by institutions of religion;
(4) Institutions of purely public charity;
(5) Non-profit educational institutions;
(6) Public libraries;
(7) Household goods used by a person in his residence;
(8) Crops grown in the year of assessment which are still in the hands of the producer; and
(9) A maximum of $6,500 of real property owned and used as a permanent residence by a person over 65 years of age, or a person classified by the federal government as totally disabled.

Section 170 also provides that the General Assembly may grant cities the power to exempt manufacturing establishments from municipal taxation for a period up to five years as an inducement for the establishment to locate in the city.

Section 171 permits the General Assembly to divide property into classes and to determine which classes are to be subject to local taxation.

Section 172 mandates that all property not exempted shall be assessed for taxation "at its fair cash value, estimated at the price it would bring at a fair voluntary sale."

Section 172A permits the General Assembly to provide for differences in the ad valorem taxation within different areas of the same taxing district where such differences "relate directly to differences between non-revenue producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district."

Section 172B permits the General Assembly to authorize local governments to grant property reassessment moratoriums for a period not to exceed five years for the purpose of "encouraging the repair, rehabilitation or restoration" of existing improvements on real property.

Section 174 requires that all property be taxed in proportion to its value.

Section 180 requires that every ordinance which levies a tax specify "distinctly the purpose for which said tax is levied." No tax levied for one purpose shall be used for any other.

Section 181 prohibits the General Assembly from levying taxes for the purpose of any city, but authorizes the General Assembly to confer on cities the right to levy certain taxes. Cities may be authorized to impose the following taxes or license fees:

(1) License fees on stock used for breeding purposes;
(2) License fees on franchises, trades, occupations, and professions; and
(3) Taxes for municipal purposes on personal property, tangible or intangible, based on income, licenses or franchises, in lieu of ad valorem taxes thereon, although cities of the first class are prohibited from omitting the imposition of an ad valorem tax on such property of any utility.

The section does not explicitly provide for the imposition of an ad valorem tax on real property, but such a power is implied from this section and others which refer or relate to such power.

Indebtedness

Section 52 prohibits the General Assembly from releasing or extinguishing the indebtedness or liability of any city.

Section 157 provides that no unit of local government shall acquire debt in any year in an amount exceeding the income and the revenue produced in such year without placing the question on the ballot and receiving the assent of two-thirds of those voting. Any indebtedness incurred in violation of this section shall be void. This limitation does not apply to revenue bonds.

Section 158 establishes maximums for the aggregate indebtedness of cities, as shown in Table 3.

TABLE 3:

Maximum Aggregate Indebtedness

Type of Government	Population	Maximum Indebtedness
1st, 2nd and 3rd	15,000 +	10% of taxable property
3rd and 4th	Less than 15,000	5% of taxable property
5th and 6th	—	3% of taxable property
Counties & Taxing Districts		2% of taxable property

The limits do not apply to revenue bond indebtedness.

Section 159 requires that municipal indebtedness be amortized in not more than 40 years. Before such debt may be incurred, the city shall levy a tax sufficient to pay the interest due and create a sinking fund for the payment of the principal.

Section 171 provides that bonds issued by cities shall be exempt from taxation.

Section 176 prohibits the state from assuming the indebtedness of any city.

Section 178 requires that all laws authorizing the borrowing of money by a city specify the purpose for which the money is to be used and that such money may not then be used for any other purpose.

Section 179 prohibits the General Assembly from authorizing a city to become a stockholder in a corporation or obtaining from or appropriating money to a corporation, or loaning its credit to a corporation, except for the purposes of constructing roads.

General Provisions Relating to Cities

Section 60 provides that except for cities, the General Assembly cannot enact laws to take effect upon the approval of any authority other than the General Assembly.

Section 61 requires the General Assembly to provide for taking the sense of the residents of a city concerning the permitting or prohibiting of trafficking in alcoholic beverages.

Section 162 makes void any agreement made by the city unless made pursuant to the express authority of the law.

Section 163 prohibits utilities from constructing any apparatus upon public ways or property without the consent of the city legislative body or board unless such right had been granted prior to the date of the Constitution.

Section 164 prohibits a city from granting any franchise or privilege for a term exceeding 20 years. Before granting any franchise the city is required to advertise, take bids, and award the franchise to the "highest and best" bidder. The section does not apply to a trunk railway.

Section 168 prohibits a city ordinance from fixing a penalty less than that imposed by statute for the same offense. A conviction under state law is a bar to conviction under local law for the same offense, and vice versa.

Section 242 requires that whenever any city exercises the privilege of taking private property for public purpose that it make "just compensation for property taken, injured or destroyed."

CHAPTER III

MUNICIPAL PROCEDURAL REQUIREMENTS (NON-FINANCIAL)

As discussed in Chapter I, the municipal code is designed to give cities a wide degree of discretion in their operation. This discretion is not total, for the KRS contain a variety of mandates which must continue to be adhered to by cities. Generally these mandates are imposed because there is some prevailing state interest in insuring that cities perform a certain activity in the same manner as all other cities, or all other cities of a particular class. The most significant areas where the state has retained control are city organization, personnel and financial administration (see Chapters V, VI, and VII).

Additionally the KRS impose a variety of non-financial procedural requirements. Those requirements are the subject of this chapter. Lastly, Chapter VIII discusses permissive enabling statutes which, while optional, impose requirements if a city wishes to perform the particular function.

Boundary Changes

A city is an artificial legal entity which has jurisdiction over a defined geographical area. A city first achieves that jurisdiction through incorporation. It may expand or decrease its jurisdiction through annexation and de-annexation. It may cease jurisdiction through dissolution.

Incorporation

Standards. In order for an area to become incorporated the following conditions must exist:

(1) Minimum population of 300 persons;
(2) Contiguous area;
(3) Incorporation represents "a reasonable way of providing the public services sought by the voters and property owners and there is no other reasonable way of providing the services";
(4) The newly formed city will be able to provide necessary city services to residents within a reasonable time; and
(5) The interests of adjacent areas and local governments will not be unduly prejudiced (KRS 81.060).

As discussed below, the issue of incorporation is determined by civil action in the Circuit Court. The court is directed to consider the following criteria in determining whether the incorporation has met the standards set out above:

(a) Whether the character of the territory is urban or rural;
(b) The ability of any existing city, county or district to provide needed services;
(c) Whether the territory and any existing city are interdependent or part of one community;
(d) The need for city services in the territory;
(e) The development scheme of applicable land-use plans;
(f) The area and topography of the territory; and
(g) The effect of the proposed incorporation on the population growth and assessed valuation of the real property in the territory. (KRS 81.060)

Procedure. Proceedings to incorporate a territory shall be before the Circuit Court of the county in which the area is located. To commence the action, a petition shall be filed with the clerk of the Circuit Court. The petition shall contain:

(1) The signatures and addresses of either:
   (a) a number of registered voters equal to 2/3 of the voters in the area; or
   (b) a number of owners of real property equal to the owners of at least 2/3 of the assessed value of the property in the area;
(2) A description of the boundaries of the area and the number of residents therein;
(3) An accurate map of the area;
(4) "A detailed statement of the reasons for incorporation, including the services sought from the proposed city";
(5) A description of the existing facilities and services provided within the territory; and
(6) A statement of the plan of government under which the city will operate if incorporated. (KRS 81.050)

The petition shall be set for hearing not later than 20 days from the date of filing. Notice of the hearing shall be given pursuant to KRS Chapter 424.

At the hearing before the Circuit Court, any resident of the area proposed to be incorporated may make a defense to the petition. Regardless of whether a defense is filed, the court may only find in favor of the incorporation if it finds, as a matter of law, that the five standards discussed above have been met. (KRS 81.060)

If the court decides in favor of the incorporation, it shall issue an order setting out the following:

(1) The name of the city;
(2) A metes and bounds description of the boundaries of the city;
(3) The population therein;
(4) The class of city; and
(5) The names of those who shall serve as mayor and members of the legislative body until the next regular election.

A copy of the order establishing the city shall be sent to the office of the Secretary of State. (KRS 81.060)

Classification

As previously discussed in Chapter 2, the 1891 Kentucky Constitution required that all Kentucky cities be placed in one of six classes based on their population. A city's initial classification is determined at the time of its incorporation by the circuit court, based on its currently recognized population (KRS 81.060).

After the initial assignment of a city to a particular class, a city does not automatically change class as the population either increases or decreases, but may be assigned to a new class only through an act of the General Assembly. The federal census is mentioned as a source of information for assigning cities to classes, but other informational sources may be utilized. The Supreme Court has therefore consistently not allowed any challenges to legislative classifications as long as they are "based upon proper population information.[9] Cities frequently receive the legislative classification they desire, rather than the classification they would receive if the spirit of the Constitution were followed."[10]

Dissolution

The corporate identity of a city may be terminated in two situations. A city which has failed to maintain a government for a period of at least one year may be terminated by order of the Circuit Court upon the petition of one or more residents of the city. A city shall be deemed to have failed to maintain a government only if it has failed to both:

(1) elect or appoint officers; and

(2) levy and collect necessary taxes. [KRS 81.094(1)]

A city which is otherwise maintaining an ongoing government may be dissolved upon a majority vote of the residents of the city. If a petition requesting dissolution is presented to the mayor and signed by at least twenty percent of those registered voters who voted in the last presidential election, the issue shall be placed on the ballot at the next general election. The petition must be filed and certified as sufficient by the county clerk the second Tuesday in August preceding the general election. If a majority of those voting favor dissolution, the city shall be dissolved within 30 days of the certification of the election results. A city may not be dissolved by popular vote if it has any outstanding long-term debt or debt in excess of the assets of the city [KRS 81.094(2)].

Any resident of the city may offer a defense to a petition to dissolve. A petition shall be granted by the court only if it finds that:

(1) Notice of the petition was published pursuant to KRS Chapter 424; and

(2) Provision for the equitable distribution of all city assets and liabilities has been made and approved by the court (KRS 81.096). All remaining assets of a city become the property of the fiscal court of that county.

Annexation

A city expands its jurisdiction into outlying areas through the method of annexation. Three methods of annexation are authorized, two applicable to cities of the first class, the other applicable to cities other than the first class.

Cities of the First Class. A city of the first class which has in effect a cooperative compact with its county pursuant to KRS 79.310-79.330 may annex contiguous unincorporated territory only if the voters in such area approve of such annexation. To commence annexation, the board of aldermen shall enact an ordinance declaring its intention to annex the area (KRS 81A.005). KRS 81A.425 requires that notice be sent by first-class mail to each property owner in such an area. A copy of the ordinance shall be delivered to the county clerk, who shall place the question on the ballot at the next regular election, if the ordinance is filed with the county clerk by the second Tuesday in August preceding the regular election, in those precincts contained in the area being annexed. The question shall be stated as: “Are you in favor of being annexed to the City of ___?” If a majority of those voting are in favor of annexation, within 60 days of the certification of the election, the board may enact the second ordinance annexing the area to the city. If the question fails to gain 50% approval the first ordinance shall become ineffectual (KRS 81A.005). After a failed annexation attempt, the city may not propose to annex the same area for at least five years (KRS 81A.460).

Once a city of the first class having in effect a compact gives the first reading to the first ordinance proposing annexation, the city shall have priority in the area proposed to be annexed. Until such time as the annexation is defeated or the ordinance is withdrawn, repealed or amended as to area, no city may be incorporated within the area nor may any other city annex any part of

the area. This priority does not apply to incorporations or annexations commenced prior to the first reading of the ordinance (KRS 81A.005).

A city of the first class which does not have in effect a compact with the county pursuant to KRS 79.310-79.335 may annex any unincorporated territory contiguous to its boundaries. Incorporated territory may not be annexed (KRS 81A.010). Prior to beginning the annexation process by the enactment of the first ordinance stating its intention to annex, the city must prepare a report setting out the following:

(1) A map of the city itself and the territory to be annexed, showing:
   (a) the present and proposed boundaries of the city;
   (b) the present streets, water mains, sewer lines and utility lines;
   (c) the present areas receiving or able to receive major city services and the proposed extension of such services to other areas;
   (d) the prevailing land use patterns in the area to be annexed; and
   (e) a map showing the zoning that will be effective for the annexed area (if the annexing city has zoning).

(2) A statement that the area to be annexed meets the requirements of KRS 81A.010 to 81A.020;

(3) A statement of the city's plans for extending to the area to be annexed each major city service. The statement shall:
   (a) provide for the immediate extension of police and fire protection, garbage collection and street maintenance on substantially the same basis as provided to the existing area of the city;
   (b) provide for the extension of streets, major trunk water mains, sewer lines and utility lines;
   (c) set out the proposed timetable for the extension of city services;
   (d) provide an estimation of tax rates in the area to be annexed for each year until such time as all major services are provided; and
   (e) describe the planned methods for financing the extension of services (KRS 81A.050).

After the preparation of the annexation report, the city shall hold at least two public hearings prior to the enactment of the first ordinance. At each hearing, the city shall explain the annexation report and listen to testimony. The board of aldermen shall consider the testimony. If the report is amended, another hearing shall be held on such amendments (KRS 81A.060).

If after the preparation of the report, the board of aldermen desires to annex the territory it shall enact an ordinance stating its intention to annex an area. The ordinance shall be published pursuant to KRS Chapter 424 and a notice shall be sent pursuant to KRS 81A.425 to each property owner in the area proposed for annexation. From the date of publication the residents of the area to be annexed have 30 days to file a petition in Circuit Court remonstrating against the annexation. If no petition is filed, the city may enact a second ordinance, at the end of the 30-day period, annexing the area. If a petition is filed, the issue shall be tried in the Circuit Court before a jury. The question of which party has the burden of proof depends upon the percentage of area residents remonstrating. If less than 75% have remonstrated, the city need only prove that the annexation "will be for the interest of the city and will cause no manifest injury" to the persons in the area; however, if 75% or more of the residents remonstrate, the city must prove that the failure to annex will "materially retard the prosperity of the city" (KRS 81A.020).

If the court renders judgment in favor of the city, the board may enact the second ordinance annexing the area; if the court finds against the city, the board shall be precluded from annexing the area.

After the city has annexed an area by either method, the ad valorem tax rate on property therein shall be an amount commensurate with the services or facilities made available to the residents of the annexed area, in relation to those provided in other parts of the city. If a service available from the city has been provided previously from another source, the city shall not tax for such service unless the service is actually provided by the city as a lawful replacement for an existing service (KRS 81A.070).

Relocation of Cities. The 1996 General Assembly created a new section of KRS Chapter 81 to allow cities in counties containing a city of the first class, which have been adversely affected by a public project of the first class city, to relocate to any unincorporated area of the county. The relocated city shall be restricted to the same acreage as the original location and all financial assets shall be transferred with the relocation. The city clerk is responsible for forwarding specified information to the Secretary of State within one year of the relocation or the city will be ineligible to receive state funds (KRS 81.380).

Cities Other than the First Class. Any city of the second through the sixth class may annex any unincorporated territory, which:

(1) Is contiguous to the boundaries of the annexing city at the time annexation proceedings are begun; and

(2) Is urban in character or suitable for development for urban purposes without unreasonable delay (KRS 81A.410).

A city other than the first class must take the following steps in order to annex unincorporated territory:

Step 1. Enactment by legislative body of annexing city of an ordinance stating its intention to annex territory. The "first ordinance" shall contain the following:

(1) An accurate definition of the boundaries of the territory to be annexed; and

(2) A declaration of the desirability of annexation.

If a city has adopted zoning, it may provide for the zoning or land use regulation of the area proposed for annexation prior to the adoption of the annexation ordinance as prescribed (KRS 100.209).

Step 2. Publication of the ordinance. Notification of the right of the residents of the area being annexed to remonstrate must also be published pursuant to KRS 424.130 and 424.140. It is not sufficient to merely republish the ordinance required by KRS 81A.420 because such publication is not reasonably calculated to inform the public of its rights.[14]

Step 3. Notification pursuant to KRS 81A.425 shall be sent to all owners of property within the area proposed for annexation. This shall be done at least 14 days prior to the meeting at which the annexation ordinance is to receive its second reading.

Step 4. Within 60 days of the publication of the first ordinance, residents of the area to be annexed may file with the mayor of the annexing city a petition remonstrating against the annexation effort. To be adequate, the petition shall contain the names of 50% of the resident voters or owners of real property.

Step 5. If a sufficient petition is received, the question of annexation shall be put to a vote by the residents of the area to be annexed, at the next regular election if the petition is presented to the county and certified as sufficient by the second Tuesday in August

preceding the regular election. Regular election is defined by KRS 446.010(28) to mean the November election, and not a primary election. The question on the ballot shall read: "Are you in favor of being annexed to the City of __?"

Step 6. **Election.** The annexation effort shall be voided if 55% or more of those voting oppose annexation. If less than that percentage, the area shall become part of the city.

Step 7. If the residents fail to vote down the annexation, or if no petition is received during the 60-day period of Step 3, the legislative body of the annexing city may enact the "second ordinance," formally annexing the territory to the city. If the city elected to pre-determine the zoning of the area prior to completion of the annexation process, the "second ordinance" shall include a map showing the zoning of the newly annexed area (KRS 81A.420).

Provisions Applicable to All Cities

A. **Assumption of Liabilities.** Whenever any city annexes territory, it shall be liable for all debts that might be attached to the area by reason of it having been a part of a taxing district (KRS 81A.450).

B. **Recording Boundary Changes.** Whenever a city changes its boundaries, whether through annexation, transfer, or reduction, it shall file with the county clerk, the Department for Local Government, and the Secretary of State's office a map and metes and bounds description of the area within 60 days of such annexation. Failure to file such notice shall bar the city from levying taxes upon the residents or property within the annexed territory (KRS 81A.470 and 81A.475).

C. **Re-attempting Annexation.** If a city's annexation effort is defeated by the voters, it may not re-attempt the annexation of that same area for a period of five years from the date of rejection (KRS 81A.460). Because the language of this statute refers to rejection by the voters, it does not apply to annexation of unincorporated territory by a city of the first class that has no cooperative compact in effect with its county.

D. **Annexation of Property of Consenting Landowners.** If an annexation effort is being challenged, the city may proceed to annex any land within the area proposed to be annexed if the land is contiguous to the city and the owner of such land consents (KRS 81A.500). Also, individual landowners may request the annexation of their respective property. In such cases, the property must still meet the requirements of KRS 81A.410 and the city is not required to wait 60 days before proceeding with the annexation (KRS 81A.412). 1994 legislation amended KRS 81A.412 to require cities which annex territory with the prior consent of the landowner to enact and publish only a final public notice of the action, without being bound by the requirements of KRS 81A425. If the city has determined the zoning of the area prior to the annexation, certain zoning documents must

E. **Industrial Plant Statute**. KRS 81A.510 imposes additional restrictions upon a city attempting to annex an unincorporated area in which an industrial plant is located. Such an area may be annexed only if:

(1) It is embraced within a broad, comprehensive plan of annexation;
(2) It is contiguous to the boundary of the city;
(3) It is both contiguous and compact; and

(4) The number of registered voters in the area is at least equal to 50% of the average number of persons employed by the industrial plant in the last year.

F. Impoundments of Water. A city of the fifth class, as an alternative to other methods of annexation, may, by ordinance, unilaterally annex an impoundment of water created by a dam constructed by the city and used to supply the city's water, as well as lands lying within 50 feet of the water. The area annexed, however, may not exceed one-fourth acre multiplied by the number of residents in the city (KRS 81A.520).

Technical Requirements for Annexation

Because annexation efforts are usually challenged, it is of utmost importance that the city be extremely scrupulous in complying with the technical requirements of annexation. Four requirements are fundamental:

(1) The annexation ordinance must be duly enacted pursuant to KRS 83A.060;
(2) Proper publication of the ordinance and required notices must be made;
(3) The area to be annexed must be accurately described; and
(4) The area to be annexed must be contiguous to the city.

Annexation Priority

If two cities are competing to annex the same territory or if the city is attempting to annex the same territory which the residents are seeking to incorporate, the municipality which first takes the statutory steps toward acquiring territory has priority.[15]

In a county containing a city of the first class in which a cooperative compact is in effect between the city and the county, no city may annex nor may an area become incorporated within any territory subject to an annexation ordinance of the city of the first class. Such prohibition shall arise once the ordinance is given its first reading and shall continue until the annexation effort is defeated, or the ordinance is repealed, withdrawn or amended as to the area in question. The prohibition does not apply to an annexation or incorporation begun prior to January 1, 1986 (KRS 81A.005).

Reduction of Territory

The reverse procedure from annexation is the reduction of incorporated territory. A city may strike an area from its boundaries by a procedure similar to the one for annexation. The legislative body shall enact an ordinance stating such intention, accurately defining the area to be stricken from the city, and providing that the question shall be placed on the ballot at the next regular election. In order for the election to be held at the next regular election, the ordinance must be filed with the county clerk by the second Tuesday in August preceding the regular election. The questions shall be voted upon only by the registered voters within the area proposed to be stricken. If a majority of those voting on the question approve the proposal, the legislative body shall adopt an ordinance striking the area from the corporate boundaries of the city within ten days of the election certification (KRS 81A.440). If a majority of the voters reject the proposal, no attempt to strike off the same area shall be made for five years from the date of the rejection (KRS 81A.460).

Even though KRS 81A.440 applies to reduction of territory by all cities, there continues to exist a separate statute, KRS 81A.010, for reduction of territory by a city of the first class. The status of that statute is unclear in light of the enactment of KRS 81A.440.

Pursuant to KRS 81A.010, a city of the first class may strike off territory by the same procedure used to annex unincorporated territory; i.e., unilaterally, by ordinance, subject to remonstrance, which requires the question to be decided by the Circuit Court.

Transfer of Territory

To allow the transfer of incorporated areas between cities of the second through sixth classes, the 1992 General Assembly enacted HB 234. When two cities sharing a common boundary find that a specified area within one city can best be served by the other, the area may be transferred to that city. This type of transfer requires the following:

(1) Enactment of identical ordinances by each city that (a) define the area to be transferred, (b) state the financial considerations and terms of any financial agreements, (c) resolve any tax or revenue questions, and (d) state land use or zoning regulations applicable to the area being transferred (if planning and zoning is in effect pursuant to KRS Chapter 100 in either city);

(2) A petition in support of the transfer with signatures from 51% of the number of registered voters in the area to be transferred. No petition is required when the area proposed for transfer has no residents and the property owners consent in writing to the transfer; and

(3) The filing of a metes and bounds description of the transferred area and a copy of the ordinance with the Secretary of State's office, the respective county clerks' offices of the cities involved, and the Department for Local Government.

When the transfer is complete, the newly transferred area shall assume the local option status of the city of which it is now a part (KRS 81.500).

Merger

Cities may not annex other cities or any portion of other cities. Two or more contiguous cities may become a single city through merger, however.

To initiate the process of merger the legislative body of each affected city shall enact an ordinance calling an election on the question of merger. The election shall be held not less than held at the next regular election if the ordinance of the legislative bodies of the cities desiring merger or consolidation have been filed with the county clerk by the second Tuesday in August, preceding the regular election. The question on the ballot shall read: "Are you in favor of merging or consolidating the City of _____ and the City of ___into one city to be known as the City of ___?" If a majority of the legal votes cast in all cities, each city being a separate election unit, are for merger or consolidation, then the cities shall be merged thirty (30) days after certification of the election results. The classification and organizational structure of the "new" city will be that of the largest of the "old" cities (KRS 81.410-81.440).

Alternative Method of Rendering Services in County Containing a City of the First Class

The mayor of the city of the first class, with the approval of the board of aldermen, may submit to the fiscal court of the county a "plan for the improvement of local government in the county." The plan shall be placed on the ballot for approval by the residents of the county at the next general election if the plan is delivered to the fiscal court within 90 days or more of the election and if the certified copy of the plan is filed with the county clerk by the second Tuesday in August, preceding the general election. The votes shall be tabulated separately for each city

and the unincorporated territory of the county. The plan shall be adopted only if approved by a majority of those voting within the city of the first class and in the area of the county outside such city. Except for a city of the first class any city in the county may be excluded from the plan if less than a majority of those voting in the city approve the plan (KRS 81.300-81.360).

Cooperative Compact

The 1986 General Assembly mandated that a city of the first class and the county containing such city enter into a compact within 120 days of July 15, 1986. Louisville and Jefferson County, being the only city and county meeting these qualifications, entered into the original cooperative compact. This original compact agreement expired on June 30, 1998. The 1998 General Assembly enacted legislation which allows the extension of the cooperative compact process without further time restrictions (KRS 79.335). The compact provides a framework for cooperative activity between the two governments. The compact is executed by the mayor and the county judge/executive with the approval of the respective legislative bodies. The compact may be amended by agreement of the two local governments.

The compact may contain any provisions agreed upon by the parties, but must at a minimum provide that during the time the compact is in effect:

(1) Annexation by a city of the first class shall be pursuant to KRS 81A.005 (discussed herein);
(2) Occupational license fees collected by the city and the county shall be distributed in accordance with the formula provided in KRS 79.325 instead of the situs of the taxpayer; and
(3) Control and responsibility for various joint agencies shall be reassigned pursuant to the Act (KRS 79.310-79.335).

The purpose of the compact is to resolve the annexation struggles between the city and the county. The heart of the compact is an agreement by the city not to annex unincorporated territory, reciprocated by an agreement of the county to share occupational tax revenues generated by new growth outside the city.

Contracting

A city is a legal entity with the power to contract with other entities or individuals for the furnishing or providing of goods and services (KRS 82.081). The KRS impose limitations or requirements on that power.

Model Procurement Code

A city may elect by ordinance to adopt the provisions of KRS 45A.343-45A.460, which provide a comprehensive code for the procurement of goods and services. If the code is adopted all purchases made by the city must conform to the provisions of the code. Violation of the code may be punished by a fine of up to $1,000 or imprisonment not to exceed one year (KRS 45A.990).

The basic requirement of the procurement code is that all contracts and purchases, with exceptions where bidding would be inappropriate, must be awarded by competitive sealed bidding. Invitations for bids must be advertised in a newspaper and the bids must be opened publicly at an announced location. The contract must be awarded to the responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price (KRS 45A.365).

Because competitive sealed bidding is not always feasible, the code permits the use of alternative methods in the following situations:

(1) Competitive negotiation may be used where (a) specifications are too vague, (b) sources of supply are limited, time and place of performance cannot be determined, price is regulated by law or a fixed price contract is not applicable, or (c) bids received are unreasonable or identical (KRS 45A.370);
(2) Negotiations may be conducted if all the bids received through competitive sealed bidding exceed available funds (KRS 45A.375);
(3) Non-competitive negotiations may be used where (a) an emergency exists, (b) there is only one supplier, (c) the contract is for the services of a licensed professional, (d) the contract is for the purchase of perishable items brought at frequent intervals, (e) the contract is for replacement parts where the need cannot be anticipated, (f) the contract is for proprietary items for resale, (g) the contract is for purchases on trips, (h) the contract is for purchase of supplies sold at auction, (i) the contract is for insurance, or (j) the contract is for supplies at reduced prices (KRS 45A.380); or
(4) Small purchase procedures may be used where the aggregate amount of the contract is less than $20,000 (KRS 45A.385).

The code also prohibits any employee of the local government who has procurement authority to participate directly in a purchase where there is a conflict of interest (KRS 45A.450-45A.460).

Another method allows an alternative for procuring architectural and engineering services. Local public agencies (this includes cities and urban-counties) may adopt KRS 45A.730-45A.750 and procure such services by qualification based negotiations. Firms are to be chosen for negotiations based upon the qualifications and performance data they submit for review.

Senate Bill 258, enacted by the 1994 General Assembly, requires all contractors awarded state and local government contracts after July 15, 1994, to reveal any previous violation of applicable Kentucky laws and to comply with all Kentucky laws for the duration of the contract. Failure to reveal such violations or to comply with laws is grounds for cancellation from future contracts for two years. (KRS Ch. 45A)

General Bidding Requirement

If a city does not adopt the provisions of the Model Procurement Code, it must take bids for any contract, lease, or other agreement for materials, supplies, equipment, or non-professional services which involve an expenditure in excess of $10,000 (KRS 424.260).

Also relative to purchasing, KRS 45A.500-45A.540 encourages local governments to purchase through the state central purchasing office. It also allows the Finance Cabinet to require contractors to follow the recycled materials guidelines for projects receiving state funding (KRS Ch. 224).

Guaranteed Energy Savings Contract

The 1996 General Assembly enacted SB 157 to allow local public agencies to enter into a guaranteed energy savings contract for innovative solutions for energy efficiency in public agency buildings. KRS Chapter 45A specified how a contract is implemented and how a qualified provider is chosen.

Interlocal Cooperation

Cities may contract with other cities or counties, agencies of the state, agencies of other states, or agencies of the U.S. government to perform a function or service jointly. No function may be performed jointly unless all parties to the agreement are empowered to perform the function independently (KRS 65.240). KRS 65.245 clarifies that local governments may share their revenues through interlocal agreements.

An interlocal cooperation agreement, except one exempted under KRS 65.260, must be approved by the Attorney General and shall contain the following:

(a) The duration of the agreement;
(b) The organization and nature of any separate entity created or, if no separate entity is created, provision for an administrator or joint board responsible for administering the joint activity;
(c) The manner of financing the activity;
(d) The procedure for terminating the agreement; and
(e) Any other necessary and proper matters (KRS 65.250 through 65.300).

Agreements involving the construction, reconstruction, or maintenance of a municipal road or bridge (with a written agreement from each affected governing body) and agreements between school boards and counties are exempt from the need for Attorney General approval (KRS 65.260).

Joint Contracting

Any city may contract with any county or city located within the same county as the city for the performance of governmental services (KRS 79.110). The contract must be approved by the legislative bodies of the participating local governments and must specify the following:

(1) The type of service to be provided;
(2) The local government which is to provide the service;
(3) The area within which the service is to be performed; and
(4) The means of payment for the service (KRS 79.120).

Where one party to the contract is the county, the contract must take into account that city residents pay county taxes as well as city taxes (KRS 79.120). Any joint contract must be for a period of not less than two nor more than four years (KRS 79.170). Additional rules are contained in KRS 79.130 through 79.180.

Also KRS 79.190 permits cities and counties to share the cost of construction and maintenance of streets and sidewalks, and KRS 67.083 authorizes the cooperative exercise of powers by local governments or the exchange of services, including personnel and equipment.

Joint Purchasing

Any city may enter into a contract with other local governments to establish a joint agency responsible for purchasing or civil service (KRS 79.010).

Local Government Codes of Ethics

The 1994 General Assembly enacted HB 238, requiring the governing body of each city and county, including urban-counties, charter counties, and consolidated local governments, to adopt by ordinance, a code of ethics for all elected and appointed officials and specified employees. KRS 65.003 requires candidates for the specified local government elective offices to comply with the annual financial disclosure statements contained in local government ethics codes. All codes of ethics must include, but not be limited to, the following:

- standards of conduct;
- requirements for financial disclosure;
- nepotism policies; and
- designation of a person or group to enforce the code.

House Bill 238 specified that all codes must be enacted by January 1, 1995. The code of ethics ordinance may be amended but may not be repealed. Upon enactment of a code, local governments must deliver a copy of the code of ethics ordinance, proof of publication and subsequent amendments to the Department for Local Government.

Failure to comply with the code of ethics provisions set out in KRS 65.003 will result in a loss of services and payments of money from the Commonwealth of Kentucky (KRS Chapter 65).

Recordkeeping

City Clerk

All cities except cities of the first class must employ a city clerk who shall be responsible for the maintenance and safekeeping of the permanent records of the city, the performance of the duties required of the "official custodian" or "custodian" under the open records act, and the annual reporting of prescribed municipal information to the Department for Local Government (KRS 83A.085).

Open Records Act

The open records law gives private individuals the right to examine public records of public agencies, within certain limits (KRS 61.870-61.884). Without a court order the following public records are exempt from the open records law:

(1) Records containing personal information, the disclosure of which would constitute an unwarranted invasion of privacy;
(2) Certain records confidentially disclosed to an agency and maintained for scientific research;
(3) Records confidentially disclosed to an agency by an entity whose competitors would gain an unfair commercial advantage if the records were openly disclosed. Materials disclosed in connection with a loan application or for the regulation of commercial enterprises are the records specified under this exemption;
(4) Records pertaining to a prospective location of a business where no public disclosure has been made of the business's intention to move;
(5) Studies made relative to acquisition of property, until such time as the acquisition is complete;
(6) Materials relating to examinations;

(7) Materials of law enforcement agencies which would disclose the identity of confidential informants, prior to use; however, records compiled and maintained by county or Commonwealth's attorneys pertaining to criminal investigations or litigation shall remain exempt even after use;
(8) Preliminary drafts, notes, and certain correspondence with private individuals;
(9) Preliminary recommendations and memoranda;
(10) Access to data bases or geographic information systems used for commercial purposes; and
(11) Records otherwise prohibited from disclosure.

Any person shall have access to any public record relating to him personally, except that public agency employees shall not have the right to inspect or copy any documents relating to ongoing criminal or administrative investigations by an agency.

Generally a person has the right to abstract or copy (at his own expense) any record not exempted from the law. During their regular working hours agencies are required to make suitable facilities available for inspecting non-exempt public records, and the official custodian may require a written application describing the records to be inspected. Applications may be hand-delivered, mailed, or faxed, and the public agency shall mail copies of requested records to a person whose residence or principal place of business is outside the county in which the records are located. Prepayment of a fee for copies of public records may be required. Such a fee shall reflect the actual cost of the copies without including the cost of staff services required to make the copies.

An application may be refused if it places an unreasonable burden upon the agency to produce the records or if it seems clearly intended to disrupt other essential functions of an agency. Blanket requests for information or for the preparation of lists not already in existence need not be honored.

A public agency must determine within three working days whether to comply with a request to inspect records and so notify the requesting party. Any denial for inspection shall include a statement giving the specific exception that authorizes the denial and a brief explanation of how the exception applies to the record withheld.

Public agencies are not responsible for notifying the Attorney General when they deny a request to inspect a public record. If the Attorney General is asked to review a denied request, his decision may be appealed to the Circuit Court within 30 days of the decision. If no appeal is filed within 30 days, the Attorney General's decision shall have the force and effect of law.

Public agencies may charge a reasonable fee for making copies in specialized formats, to include the cost of the media and any mechanical processing. If a person requests public records to be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of postage. (KRS 61.872)

Records Retention

The Kentucky Department for Libraries and Archives, pursuant to KRS Chapter 171, establishes rules and procedures for the maintenance and retention of public records of local governments. Pursuant to that authority, the Department has promulgated administrative regulations governing the procedures for the disposal of public records and has developed model records retention and disposal schedules to be used by cities (725 KAR 1). State law prohibits public records from being destroyed except as provided by the law, and also requires all records which are likely to be of continuing value to the city, state government, or researchers to be

retained permanently. The Department has also established rules for the reproduction of public records by photographic or microphotographic process.[16] The General Assembly provides funding for a program for grants to local governments, to assist in the preservation and maintenance of records. The program is administered by the Department for Libraries and Archives.

Legal Publication

Cities are required by KRS to routinely publish information concerning their activities so that the public can be informed. KRS Chapter 424 sets out detailed rules for how such information is to be published.

Qualification of Newspapers

Notices required to be published may be published only in a newspaper possessing the following qualifications:

(1) It maintains a known office in the city for which the notice is required to be made; or if no newspaper is published in the city, then the newspaper which is qualified to publish advertisements for the county;

(2) It is a regular issue and has a bona fide circulation, is published at least once a week for at least 50 weeks during the calendar year and has been published for the preceding two year period. However, a newspaper shall be deemed a regular issue even if it has not been published in the area for the preceding two years, if it meets the other criteria for a regular issue and is the only paper in the publication area and has a paid circulation equal to at least 10% of the population within the publication area (KRS 424.120);

(3) It has a name or title, consists of not less than four pages and is the type of publication "to which the general public resorts for passing events—and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices."

If in a publication area there is more than one newspaper meeting the above qualifications, the newspaper having the largest paid circulation as shown by the average number of paid copies of each issue as shown in its published statement of ownership as filed on October 1 shall be the paper of record.

Times and Periods of Publication

The timing of legal advertisements is governed by the nature of the matter being advertised:

(1) Advertisements of a completed act (e.g., ordinance, report), the purpose of which is not to inform the public "that they may or shall do an act or exercise a right within a designated time," shall be published one time, within 30 days of the completed act;

(2) Advertisements which have the purpose of informing the public that they, on or before a certain date, may perform some act, such as filing a petition, remonstrance, objection, bid, or claim, shall be published at least once, but may be published two or more times, provided one publication occurs not less than seven days nor more than 21 days prior to the date referred to;

(3) Advertisements for the sale of property or notice of delinquent taxes shall be published three times—once a week for three successive weeks for cities of the second through sixth classes. For cities of the first class, advertisements for the sale of property or notice of delinquent taxes shall be published one time—preceded by a one-half page notice the previous week; and
(4) Advertisements not falling within the above categories—e.g., notices of inspections, public hearings, due dates of taxes, or examinations—shall be published at least once, but may be published two or more times, provided that one publication occurs not less than seven nor more than 21 days prior to the event (KRS 424.130).

Alternative Methods of Publication

Cities must publish legal notices in zoned editions of qualified newspapers that target the area for which the notice is intended (KRS 424.120).

Cities may mail notices by first class mail to all city residents in lieu of newspaper publication, if the cost of such mailing, including postage, supplies and reproduction costs, would be less than the cost of newspaper publication (KRS 424.190).

Responsibility for Publications

The responsibility for publication rests upon whoever is charged by statute with the duty to publish. If a particular officer is so charged it shall be his responsibility to ensure proper publication; if it is the city generally which is charged to publish, responsibility shall rest with the city clerk, or if there is no such officer, the mayor (KRS 424.150).

Matters to be Published

Year End Financial Statements. After each fiscal year, all cities, consolidated local governments, and urban-county governments must publish either a copy of their audit prepared pursuant to KRS 91A.040 or a copy of the financial statement prepared in accordance with KRS 424.220 (see Chapter VI for the requirements of those statutes). Any city which contracts for an audit, prior to the publication of the auditor's report or a financial statement, must within 90 days after the close of the fiscal year publish a notice that it has prepared the KRS 424.220 financial statement and that the statement has been provided to each local newspaper, each news service, and each local radio or television station which has a written request for the statement on file (KRS 91A.040).

Any city which only intends or is only required to publish a financial statement must publish such statement within 60 days after the close of the fiscal year (KRS 424.220).

Ordinances. Except in cities of the first class or charter county governments, cities must publish ordinances before they can become effective. Ordinances may be published in summary form, in which case the summary shall be prepared and certified by an attorney licensed to practice law in Kentucky and shall include the following:

(1) The title of the ordinance;
(2) A brief narrative that clearly and understandably informs the public of the meaning of the ordinance; and
(3) The full text of each section that imposes fines, penalties, forfeitures, taxes, or fees.

The eligibility of all ordinances for publication in summary form is a result of HB 29 from the 1992 Regular Session. Ordinances declared to be emergency matters become effective without publication, but they shall still be published within ten days of their enactment (KRS 83A.060).

Miscellaneous Matters. KRS Chapter 424 requires publication of the following events or activities:

(1) Summary of budget, except in cities of the first class or consolidated local governments (KRS 424.240);
(2) Advertisement for bids for contracts or leases for materials, supplies, equipment, or non-professional services, involving an expenditure in excess of $10,000 (KRS 424.260);
(3) General regulations of uniform application imposing liabilities or restrictions upon the public, not including ordinances, promulgated by any city officer or agent (KRS 424.270);
(4) Due dates of ad valorem taxes (KRS 424.280); and
(5) Invitation to bid on the sale of municipal bonds. If the bonds are in excess of $10,000,000 (SB 215 in 1992 raised it to this amount from $750,000) the advertisement shall be published in a publication having a national circulation among bond buyers (KRS 424.360).

KRS 424.330 allow cities to publish a list of uncollected delinquent taxes that shows the name of and the amount due from each delinquent taxpayer.

Legislative Procedure

Open Meetings

KRS 61.805 through 61.850, popularly known as the sunshine law, is designed to ensure citizen access to the workings of government. It requires that the public be admitted to any meeting of a public agency at which a quorum is present, public business is discussed, or action is taken. "Meeting" is defined broadly to mean not just formal meetings, but "all gatherings of every kind, regardless of where the meeting is held and whether regular or special, and informational or casual gatherings held in anticipation or in conjunction with a regular or special meeting" (KRS 61.805).

City legislative bodies, boards and commissions are "public agencies." A "quorum" of a legislative body is a majority of the membership. Even if the first three elements are present, the open meetings law does not apply unless (1) public business is discussed or (2) action is taken. "Action taken" means "a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body" (KRS 61.805).

If the above conditions exist, the meeting must be open to the public and the press must have been notified in advance of the meeting, unless one of the exceptions to the open meetings law applies. If an exception is applicable, the governmental body may conduct a closed meeting. Closed meetings may be conducted for the following purposes:

(1) Deliberations on the future acquisition or sale of real property, but only where publicity would affect the value of the property;
(2) Discussion of proposed or pending litigation;
(3) Collective bargaining negotiations;
(4) Discussions relating to the appointment, discipline, or dismissal of a particular employee;

(5) Discussions with the representative of a business entity and discussions concerning a specific proposal if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business; and
(6) Meetings required to be private by federal or state law (KRS 61.810).

Closed meetings for the purposes of (1) and (4) above may only be conducted if:

(1) Notice of the meeting, the general nature of its subject matter, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session are announced at an open meeting;
(2) The closed meeting is approved by motion adopted by majority vote at an open meeting;
(3) No final action is taken at the closed meeting; and
(4) No matters other than those announced at the open meeting are discussed (KRS 61.815).

Additionally, the open meetings law requires that regular meetings be held at specified times and places which are convenient to the public and that a schedule of such meetings be made available (KRS 61.820). For a special meeting to be held, it must be called by the presiding officer or a majority of the members of the public agency. Written notice shall be mailed or delivered at least 24 hours prior to the meeting to each member of the legislative body, and to each newspaper, news service and local radio or television station which has requested to be notified of such meetings. Also, a written notice shall be posed at least 24 hours in advance in a conspicuous place in the building where the special meeting is to take place and in the building that houses the headquarters of the agency. A public agency may annually inform media organizations that they must submit a new written request to continue to receive notice of special meetings.

In the case of an emergency a public agency shall make a "reasonable effort" to notify the members of the agency, appropriate media organizations, and the public. At the beginning of an emergency meeting, the person chairing the meeting shall describe the emergency circumstances that prevented 24 hour notice to be given—these comments shall be a part of the minutes (KRS 61.823). Minutes of all meetings shall be recorded and made available (KRS 61.835). No undue restrictions may be required for attendance at meetings. For violation of the act, a court may void the action taken at a meeting not in substantial compliance, and penalties may be imposed upon the individual violators (KRS 61.991).

Conduct of Meetings

A city legislative body may take action only upon the approval of an appropriate majority of the duly constituted body. The members of the legislative body, except in commission plan cities, possess no individual municipal powers. The legislative body is to meet regularly, at least once a month, at a time and place fixed by ordinance. Special meetings may be called at any time by the mayor, a majority of the council in mayor-council plan cities, or a majority of the members in commission or city manager plan cities. The call for a special meeting shall designate its purpose, time, and place. No business other than that set forth in the call may be considered at a special meeting [KRS 83A.130(11), mayor-council; KRS 83A.140(7), commission; KRS 83A.150(4), city manager].

A legislative body may take no action unless a quorum of the members is present. A majority of the members constitutes a quorum (KRS 83A.060). The mayor does not count toward a quorum in mayor-council plan cities, but does in commission or city manager plan cities.

Regardless of plan, the mayor shall preside over the legislative body. In his absence the legislative body shall appoint one of its members to preside. The mayor may vote on all matters in commission and city manager plan cities, but may vote only to break a tie in mayor-council plan cities (KRS 83A.130, 83A.140, 83A.150).

The legislative body may speak only collectively, pursuant to the votes of its members. The written devices through which a city legislative body speaks are ordinances, resolutions and orders.

An ordinance is "an official act of the legislative body, which is a regulation of a general and permanent nature and enforceable as a local law or an appropriation of money" (KRS 83A.010).

A municipal order is "an official act of the legislative body...which is binding upon officers and employees of the municipality and any governmental agency over which the municipality has jurisdiction" (KRS 83A.010). Orders are for such internal purposes as appointing members of city boards or commissions, or establishing procedural personnel rules.

A resolution is not statutorily defined but is distinguished from an ordinance as being "an act of a special or temporary character not prescribing a permanent rule of government, but merely declaratory of the will or opinion of a municipal corporation."[17]

Members of city legislative bodies have the same immunities as members of the General Assembly for statements made in debate [KRS 83A.060(15)]. Section 43 of the Kentucky Constitution states that members of the General Assembly "shall not be questioned in any other place" for any speech or debate during sessions.

Enactment of Ordinances

KRS 83A.060 mandates a procedure to be followed for the enactment of ordinances. The procedure does not apply to orders or resolutions. It represents the minimum steps which must be followed for the enactment of ordinances. The legislative body may adopt additional requirements.

Step 1. **INTRODUCTION OF ORDINANCE AND FIRST READING**. Only a member of the legislative body may introduce an ordinance (the mayor in a mayor-council plan city is not a member of the legislative body). The requirement of a first reading may be satisfied by stating the title and reading a summary prepared by a licensed attorney which succinctly covers the main points of the ordinance and informs the public in a clear and understandable manner as to its meaning (KRS 83A.010).

Step 2. **SECOND READING.** An ordinance must be read before the legislative body twice, on separate days. (See OAG 83-404) The ordinance is not voted upon at the first reading, but merely read. (See OAG 84-208.) The requirement of a second reading may be waived if an emergency is declared and the ordinance voted upon after the first reading. An emergency may be declared if two-thirds of the membership of the legislative body vote to declare the emergency. The nature of the emergency must be declared in the ordinance [KRS 83A.060(7)].

Step 3. **VOTE UPON PASSAGE.** The ordinance may be voted upon at the meeting where it is read for the second time, or after the first reading if an emergency is declared, as discussed above. The vote on the ordinance must be by roll call and a permanent record of the vote must be maintained [KRS 83A.060(8)]. For an ordinance to be approved it

must receive the affirmative vote of a majority of the members voting on the ordinance [KRS 83A.060(6)].

Step 4. **MAYORAL APPROVAL.** (mayor-council and mayor-aldermen plan cities only. Upon approval, an ordinance must be presented to the mayor for his signature. The specific procedures for the mayor's approval or veto are discussed relative to different forms of government in Chapter V. In commission or city manager plan cities, the mayor must sign ordinances, but it is a ministerial act, in that he has no power to veto an ordinance.

Step 5. **PUBLICATION.** Except in cities of the first class, charter county governments, or unless an emergency has been declared, no ordinance may become effective until published pursuant to KRS Chapter 424. All ordinances may be summarized or published in full as determined by the legislative body. A summary shall include the title of the ordinance, a brief narrative clearly explaining its meaning, and the full text of each section that imposes fines, penalties, forfeitures, taxes, or fees. It shall be certified and prepared by a licensed attorney. Summaries of ordinances containing descriptions of real property may use maps in lieu of metes and bounds descriptions [KRS 83A.060(9)]. Emergency ordinances, while they become effective without prior publication, must nevertheless be published within ten days of their enactment [KRS 83A.060(7)].

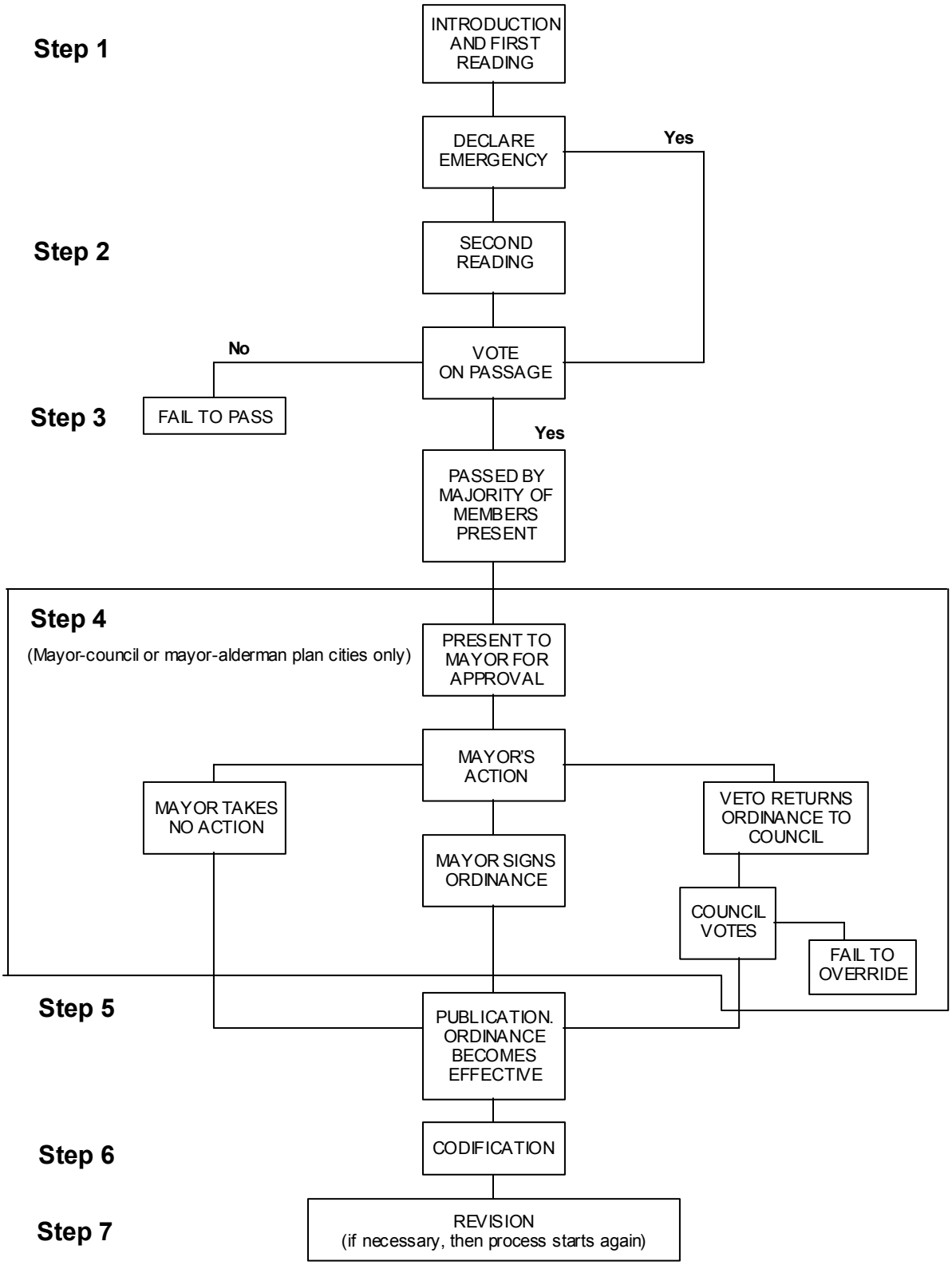
Step 6. **INDEXING AND RECORDING.** At the end of each month, all ordinances which have been adopted must be indexed and recorded as follows:

(1) City budget, appropriations, and tax levies are maintained and indexed by fiscal year;

(2) All other ordinances are kept in a minute book, in the order adopted, and indexed in a composite index, arranged alphabetically by subject matter, or they may be kept in a code of ordinances [KRS 83A.060(8)].

Step 7. REVISION. At least every five years, the ordinances in the composite index or code of ordinances shall be examined and revised to eliminate "redundant, obsolete, inconsistent, and invalid provisions" [KRS 83A.060(11)]. Figure 1 represents a flow chart of the above.

FIGURE 1
STEPS IN ENACTMENT OF ORDINANCES BY LEGISLATIVE BODY



Ordinance Format

An ordinance may only be introduced before the legislative body if it conforms to the format prescribed by KRS 83A.060. An ordinance must:

(1) Be in writing;

(2) Relate to only one subject;

(3) Have a title which clearly states its subject matter; and

(4) Have an enacting clause which reads "Be it ordained by the City of _____" [KRS 83A.060(1)].

Figure 2 illustrates a sample ordinance.

FIGURE 2
ANNOTATED ORDINANCE FORM

Ordinance No. _____ AN ORDINANCE relating to _____ _____ Whereas Whereas Be it ordained by the City of _____ Section 1. _____ _____ Section 2 _____ _____ Section ___ This ordinance shall take effect after its passage and upon publication. Enacted this ___ day of _____, 19__ _____ Mayor ATTEST: _____ City Clerk	Title, clearly reflecting subject of ordinance. Whereas clauses. Not required by law, but useful in explaining intent. Enacting clause. All that follows is enacted as a general law, all that is above is not enacted. Text Effective date, may be immediate or delayed. Signatures. Ordinances must be signed as proof they were properly enacted.

Amending Ordinance. Existing ordinances may be amended by a subsequent ordinance. The amending ordinance must set out the text of the ordinance to be amended, or if only a section

of an ordinance is being amended, that section in full. It is not permissible to amend an ordinance by reference to its title only. To amend an ordinance, the new language being inserted into the ordinance is to be underlined. Language being deleted is to have a solid line drawn through it [KRS 83A.060(3)]. Figure 3 illustrates how an ordinance is amended.

FIGURE 3
AMENDING ORDINANCE

An ordinance relating to _____ _

Be it ordained by the City of _____ _

Section 1. Ordinance ____ is amended to read as follows:

No person shall operate a ~~truck, automobile, bus, or other~~ vehicle upon any city street on <u>a day not a work-day</u>, ~~a Sunday~~

Added language

Deleted language, no replacement

Deleted language, replaced by added language

Repealing Ordinance. An existing ordinance or section thereof may be repealed in its entirety by a subsequent ordinance without setting out the language of the repealed ordinance in the repealing ordinance. It is necessary that the ordinance being repealed be clearly identified. Suggested language to use in repealing an ordinance is as follows: "Ordinance No. ___, passed ____, relating to ___is repealed."

Incorporation by Reference. The legislative body may enact an ordinance which adopts the provisions of any "local statewide or nationally recognized code and codifications of entire bodies of local legislation," by reference only, so that the text need not be set out in its entirety in the ordinance. For an incorporation by reference to be effective, the following requirements must be met:

(1) The ordinance shall identify the subject matter by title, source and date;
(2) The ordinance shall state that the material is to be incorporated by reference thereto;
(3) A copy of the material shall accompany the ordinance;
(4) The material shall be made a part of the permanent records of the city. [KRS 83A.060(5)]

Municipal Orders

The legislative body may adopt municipal orders in lieu of ordinances for either:

(1) Matters relating to the internal operation or functions of the city; or
(2) Removal or appointment of members of boards, commissions, and agencies over which the city has control.

Orders shall be in writing and may be adopted only at an official meeting. An order may be amended by either a subsequent order or ordinance. Orders shall be kept in an official order book [KRS 83A.060(12), (13)].

Ordinance Enforcement

Cities now have the power to enforce violations of their ordinances. Cities may establish fines, penalties, and forfeitures, and may secure injunctions and abatement orders to ensure compliance with ordinances. Ordinances may expressly designate noncompliance to be misdemeanors or violations. The penalties that may be imposed for either of these categories are as follows:

Misdemeanors	**Violations**
$500 or less	$250 or less
12 months imprisonment or less	

As an alternative to or in conjunction with the above penalties, an ordinance may expressly provide that an offender will be subject to a civil penalty to be recovered in the nature of debt for failure to pay the penalty within a prescribed period of time. Ordinances may also penalize an act or an omission to act that is also a violation of the KRS. Such a penalty shall be equal to that imposed by statute for the same offense. The violation of city ordinances that prescribe a criminal penalty shall be prosecuted in the District Courts by the county attorney, but violations involving civil penalties, forfeitures, injunctive relief, or abatement are the responsibility of the city attorney (KRS 83A.065).

Local Government Code Enforcement Board

Effective ordinance enforcement has been difficult for cities because overloaded district court dockets tend to place less emphasis on ordinance violations. To help alleviate this problem, the 1996 General Assembly enacted HB 814, known as the "Local Government Code Enforcement Act" to allow cities to create code enforcement boards with the power to issue remedial orders and fines for local ordinance violations (KRS 65.8801-65.8839). The 1998 General Assembly revisited this issue in order to fine tune the original legislation.

CHAPTER IV

MUNICIPAL POWERS-HOME RULE

Kentucky cities possess only those powers granted by the constitution and statutes enacted by the General Assembly. This principle, called Dillon's Rule, has been adopted in almost every state. In Kentucky the Supreme Court has stated that as a "general rule...a city possesses only those powers expressly granted by the Constitution and statutes plus such powers as are necessarily implied or incident to the expressly granted powers and which are indispensable to enable it to carry out declared objects, purposes and expressed powers."[18]

Prior to 1980, the General Assembly granted powers to cities through very specific statutes granting a narrow range of powers to perform a specific function. Those statutes had been enacted over a period of almost one hundred years and many were out-dated, obsolete or conflicting. It had become very difficult for cities to cull through this vast body of laws to determine what duties and powers they actually possessed. The 1980 General Assembly sought to remedy this problem by repealing hundreds of these specific enabling statutes and replacing them with a single statute which grants general powers to cities.[19] This grant is designed to give cities the broadest possible discretion in carrying out their affairs.

As mentioned in Chapter II, 1994 Senate Bill 256 proposed a major constitutional revision affecting local governments. It was adopted by the electorate in November 1994. This amendment includes a section which establishes "constitutional" home rule for cities. The following statutory analysis is still valid but the statute now has even greater strength because of its constitutional status.

Analysis of KRS 82.082

The home rule grant is codified as KRS 82.082 and it states:

> A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute.

By enacting KRS 82.082, the General Assembly delegated all possible municipal powers to cities subject to three significant limitations. A city may exercise any power or perform any function which is:

(1) within the boundaries of the city;
(2) in furtherance of a public purpose of the city; and
(3) not in conflict with a constitutional provision or statute.

All three conditions must be met for a power to be properly exercisable. The following examines the three limitations in detail.

"Within its boundaries"

The first limitation is a territorial limitation on the exercise of the city's power. Its power is effective only within the corporate area of the city. The area of a city is composed exclusively of the initial area incorporated and any additional area acquired through annexation. The powers

granted by KRS 82.082 may not be exercised in an unincorporated area or other city. However, as noted in later chapters, various statutes grant cities powers to perform specific acts extraterritorially.

"Is in furtherance of a public purpose of the city"

The public purpose requirement is a somewhat novel concept for Kentucky municipal law. Prior to home rule, cities were limited to exercising powers which furthered public purpose. It was presumed that if a statute granted a power it was in furtherance of a public purpose. Therefore, individual actions of cities were examined not for whether they furthered public purpose but whether they conformed with statutory authority. Public purpose issues usually arose only in cases involving the use of bond proceeds or eminent domain. When the court did bring up public purpose it seldom explained its analysis. A typical case is *Thomas v. Elizabethtown*, where the Court of Appeals was deciding whether a certain use of police automobiles by the city was appropriate. The court dispensed with the argument that no public purpose was involved by blithely stating: "To take the easy phrase first there can be little doubt but that the police automobiles are used by the city for purely public purposes."[20]

The main point about public purpose which can be gained from the bond cases is that a very broad range of activities are encompassed by the term. In *Industrial Development Authority v. Eastern Kentucky Regional Planning Commission*, for example, the court permitted the expenditure of public funds for the purpose of private industries because such use would help to eliminate unemployment and the development of the natural and man-made resources of the state and hence constituted a public purpose.[21] In *City of Owensboro v. McCormick*, the court spent much time in distinguishing "public use" from "public purpose"—albeit without ever defining public purpose. The gist of the discussion was that "public purpose" could encompass an act which only incidentally benefited the public, while "public use" is a much narrower standard.[22]

Basically public purpose means what it says on its face. The purpose of an act must benefit the public at large of the city. In an early case, *Smith v. City of Kuttawa*, the Kentucky Court of Appeals quoted with approval a New York court's definition of public purpose. "It is impossible to formulate a perfect definition of what is meant by a city purpose. The purpose must be primarily for the benefit, use or convenience of the city as distinguished from that of the public outside of it."[23]

In *Nourse v. City of Russellville*, the court stated that the purposes of municipalities are "to promote the safety, convenience, comfort, and the common welfare of their citizens by establishing and maintaining those things which tend to do so and by regulating or prohibiting those things which are hurtful."[24]

"And not in conflict with a constitutional provision or statute"

Notwithstanding the broad sweep of the grant to cities of every possible municipal power, a city is forbidden to exercise a power which "conflicts" with either a constitutional provision or statute. The "conflicts" language merely restates the well-established common law in Kentucky on the relationship of local ordinances to state law. As stated by the Kentucky Court of Appeals (now Supreme Court): "It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and state-wide application is universally held to be invalid."[25]

Subsection (2) of KRS 82.082 sets out a statutory definition of conflict: "A power or function is in conflict with a statute if it is <u>expressly prohibited</u> by a statute or there is a

comprehensive scheme of legislation on the same general subject, embodied in the *Kentucky Revised Statutes*, including, but not limited to, the provisions of Chapters 95 and 96" (emphasis added). The definition of "conflict" covers two types of clashes between state and local laws.

The first type of conflict occurs when a "power" or "function" is expressly prohibited by statute, and there is a direct contradiction between the laws—which may be called a grammatical conflict. Actually the language of the statute too narrowly defines this type of conflict, because the common law will void an ordinance if it prohibits an action specifically permitted by state law as well as an ordinance which permits an action prohibited by state law. The common law rule, as adhered to by Kentucky courts, has been stated as follows: "A conflict exists between an ordinance and a statute when the ordinance permits conduct which is prohibited by statute or prohibits conduct which is permitted by statute."[26]

The second type of conflict exists when the local government attempts to legislate in an area in which the state has enacted a "comprehensive scheme of legislation on the same general subject." Again the statute is restating a principle of common law. In *City of Harlan v. Scott*, the court struck down the city of Harlan's attempt to expand the list of retail establishments required to be closed on Sunday by state law because: "An ordinance may cover an authorized field of local laws not occupied by general laws but cannot forbid what a statute expressly permits and may not run counter to the public policy of the state as declared by the legislature."[27]

The Kentucky court elaborated on *Harlan* in the case of *Boyle v. Campbell*, another Sunday closing law case. The court explained that "where the state has occupied the field of prohibiting legislation on a particular subject, a municipality lacks authority to legislate with respect thereto."[28] Thus the theory behind pre-emption is that once the state legislates in such a manner as to "occupy the field," the power of a city to legislate in the same area is removed. It therefore follows that even if a local ordinance is identical to state legislation in a pre-empted field, "there is created a conflict of jurisdiction which nullifies the ordinance."[29]

The court in *Boyle* touches on the question of when state legislation will be said to "cover the field," by stating that when "the subject matter was fully and completely covered by this general law which expressed a state-wide public policy and by its terms indicated a paramount state concern not requiring or contemplating local action" the legislation will be considered to "cover the field."[30]

Because it was unnecessary for decision of the case, the *Boyle* court did little more than mention the problem of determining the test for when state legislation will be said to "cover the field." The court, in dicta, did cite with approval the test laid out by a California court in *In Re Hubbard*.[31] That case is a very interesting one for purposes of this discussion, because the court was ruling upon an activity of a city pursuant to a home rule constitutional provision almost identical to KRS 82.082. The California constitutional provision read: "Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with the general laws."[32] The court set out the basic premise that as long as there is no "grammatical conflict" between the local regulation and the constitutional provision, the local laws may operate on the same subject matter embodied in state legislation when "the local regulations purport only to supplement the general (law) by additional reasonable requirements or are in furtherance of" the state law, provided that the state legislation did not occupy the field.[33]

The California court lists three situations in which it would be said that the state legislation foreclosed any local regulation of the same area. The proposition was stated in the negative, implying a presumption on the part of the court that state legislation does not as a rule

totally occupy the field. State legislation on a particular subject will not be deemed to have occupied the field unless:

(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern;
(2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or
(3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.[34]

The Kentucky Supreme Court, in *Com. v. Do, Inc.*,[35] endorsed the *Hubbard* test for preemption as set out in *Boyle*. However, it appeared to reject the position that state legislation can remove a local government's ability to enact identical or non-conflicting local legislation.

The doctrine of preemption is often confused with the doctrine that provides that there shall be no conflict between state and local regulation. Municipal regulation is not always precluded simply because the legislature has taken some action in regard to the same subject. The true test of concurrent authority is the absence of conflict. The mere fact that the state has made certain regulations does not prohibit local governments from establishing additional requirements as long as there is no conflict between them.[36]

KRS 82.082(2) was not based on the language used by the court, but it is clear that when it speaks of a "comprehensive scheme of legislation" it means legislation which covers the field. The statute goes on to give two examples of comprehensive schemes, KRS Chapter 95, dealing with police and fire departments, and KRS Chapter 96, governing municipal utilities. It is doubtful if a court would feel bound by the statutory declaration if it otherwise determined that those chapters did not meet the common law standards of "covering the field."

Home Rule for Cities of the First Class

KRS 83.420, granting home rule powers to cities of the first class, was not repealed by the 1980 General Assembly. Since KRS 82.082 applies to <u>all</u> cities in the Commonwealth, Louisville (the only city of the first class) is in the curious position of having dual home rule powers. KRS 83.420 is functionally identical to KRS 82.082: "The inhabitants of each city of the first class shall constitute a corporation, with power to govern themselves by any ordinances and resolutions for municipal purposes not in conflict with the Constitution or laws of this state or of the United States."

While KRS 83.420 is the basic home rule grant, it is the board of aldermen which implements the powers, so KRS 83.520 restates the grant in equally broad language in setting out the powers of the board. The board

> shall have the power to exercise all of the rights, privileges, powers, franchises, including the power to levy all taxes, not in conflict with the Constitution, and so as to provide for the health, education, safety and welfare of the inhabitants of the city to the same extent and with the same force and effect <u>as if the General Assembly had granted and delegated all of the authority and powers that are within its powers to grant to a municipal corporation as if expressly enumerated herein</u>.[37] (Emphasis added.)

While at least in theory KRS 83.410, 83.420 and 83.520 grant cities of the first class all the power which the General Assembly may grant to a municipal corporation, there is still a large body of laws making specific grants of power. The General Assembly, being unsure of the validity of home rule, deemed it unwise to repeal the specific grants. Instead, KRS 83.520 provides that, if there is nothing contained therein to the contrary, the provisions of Chapters 65, 66, 76, 77, 79, 80, 91, 93, 95, 96, 97, 98, 99, 103, 104, 106, 107, 108, and 109 are to be considered permissive instead of mandatory with respect to cities of the first class. Additionally, all the powers, rights and duties delineated in those chapters may be "modified or delegated by the [board]...to different departments and agencies of the city government and any restrictions therein set forth shall not be considered [to abridge]...in any manner the complete grant of home rule set forth."[38]

This provision was designed to enable the city to have flexibility and not to be bound strictly by the forms and powers created by the statutes. If the board decides that a particular authorized procedure is inappropriate to the city's needs, it may modify or even ignore the statute. In actual effect, therefore, the provision repeals the named chapters with respect to cities of the first class. So, it is important to remember that while the statutes in those chapters use "shall," as well as "may," for cities of the first class, they are permissive.

CHAPTER V

ORGANIZATION

Elected City Officers

No matter which plan of government is elected by a city, KRS 83A.030 requires that there be a mayor and a legislative body. No other elected offices are created by statute, nor may they be created by ordinance. If there were other elected offices as of July 15, 1980, the offices may continue until such time as expressly abolished by ordinance passed by the legislative body.[39] No elected office may be abolished until the termination of the term of the current officeholder (KRS 83A.080).

Mayor

Every city shall have a separately elected official who shall be called the mayor (KRS 83A.030). A mayor's powers and organizational position depend on the plan of government adopted by a city.

Qualifications. To qualify for the office of mayor, a person shall:

(1) be 25 years of age;
(2) be a qualified voter in the city;
(3) reside in the city for the duration of his term (KRS 83A.040); and
(4) not be interested in any contract with the city (KRS Ch. 61).

Election and Tenure. The mayor is elected for a four-year term or until his successor qualifies. The mayor shall be elected at the regular election in November and shall take office on January 1 (KRS 83A.040). In cities of the first and second class, the mayor may only serve three successive terms (Ky. Const., Sec. 160). The mayor may be elected on a non-partisan basis if such a plan is adopted by the voters (KRS 83A.050).

Vacancies. The filling of temporary vacancies in the office of mayor differs, depending upon governmental plan. The legislative body shall fill any permanent vacancy in the office within 30 days. If it fails to act within that period, the Governor shall fill the vacancy (KRS 83A.040).

Removal. The mayor, except in cities of the 1st class, may be removed for reasons of "misconduct, incapacity, or willful neglect in the performance of the duties of his office." He shall be afforded the right to a "full public hearing," and shall have a right of appeal to the Circuit Court. Removal may be accomplished only by a unanimous vote of the entire legislative body. If the mayor is removed, he shall be ineligible "to fill the office vacated before the expiration of the term to which originally elected" (KRS 83A.040).

In cities of the first class, the mayor, like all executive and ministerial officers, is subject to removal "for cause." The removal is by impeachment before the board of aldermen. The procedure is initiated by five or more members of the board preferring charges against the mayor. Upon the preference of charges by those members, the remaining members, sitting as a court under oath, try the charge. If the mayor is thus removed, he may appeal to the Circuit Court (KRS 83.660).

Compensation. The compensation of the mayor, as for all elected officers, shall be fixed not later than the first Monday in May in the year of his election. The compensation shall not be changed during the term of the officer (KRS 83A.070). The compensation of the mayor may not

exceed the annual rate set by the Department for Local Government. (See the discussion of Section 246 of the Kentucky Constitution in Chapter II for limitations on the amount of compensation which may be paid.)

Legislative Body Members

Every city shall have a unicameral legislative body. The name of such body, as well as the number of its members, varies according to the plan and the class of the city (KRS 83A.030).

Qualifications. To qualify as a member of a city legislative body, a person shall:

(1) be 21 years of age;
(2) be a qualified voter in the city;
(3) reside in the city for the duration of his term (KRS 83A.040); and
(4) not be interested in any contract with the city (KRS Ch. 61).

Election and Tenure. A member of a city legislative body shall be elected for a two-year term. The election shall be at the regular November election, and newly elected members' terms shall commence January 1, in the year after their election (KRS 83A.040).

There are three options which a city may adopt with respect to the election of legislative body members:

(1) ward election (KRS 83A.100);
(2) staggered terms (KRS 83A.110); and
(3) non-partisan elections (KRS 83A.170).

The legislative body may by ordinance require that members be elected by ward. The city shall be divided into a number of wards equal to the number of legislative body members. The wards shall be as nearly equal in population as practicable and shall be reapportioned at least as often as every federal census. Each member of the legislative body shall reside in a different ward. Members shall continue to be voted upon city-wide in the general election, but shall be nominated in the primary election only by the voters in the ward they seek to represent. Nomination by the voters of the ward in the primary applies only where the candidates are seeking the nomination of a political party and does not apply in non-partisan elections. Wards may be abolished by ordinance. No creation, abolition or alteration of wards shall occur within 240 days preceding a general election (KRS 83A.100).

A city may elect legislative body members on a staggered basis, if approved by city voters, pursuant to the public question requirements of KRS 83A.120. At the next election of legislative body members, half shall be elected for one-year terms, the other half for two-year terms, as determined by the drawing of lots. After that election, members shall serve two-year terms, half of the membership being elected every other year. Staggered elections may be abolished only by referendum (KRS 83A.110).

The city legislative body in any city, other than a city of the second class operating under the city manager plan, may by ordinance provide that all elected officers are to be elected on a non-partisan basis. In cities of the second class with the city manager plan, non-partisan elections are mandatory. Adoption of the ordinance may not be later than 23 days prior to the date established by law for filing notification and election declaration forms. The manner of election may not be changed more often than every five years (KRS 83A.050).

In non-partisan elections candidates run without reference to their political beliefs or associations. No person may be a candidate in the November election unless he has been nominated in the primary election except for cities of the fourth through sixth classes who opt not to hold a non-partisan primary (KRS 83A.045). To run in the primary, a person shall, by the last

date required for filing notification and declaration forms (no later than the last Tuesday in January before the day fixed by KRS Chapter 118 for holding a primary election), file with the county clerk or Secretary of State a petition signed by at least two registered voters in the city (KRS 83A.045, 83A.047 and 83A.170). In the primary election, the two applicants receiving the highest number of votes for each office shall be nominated, or, in the case of at-large election for legislative body members, a number of applicants receiving the highest number of votes equal to twice the number of seats on the legislative body to be filled. If no more than two persons apply for an office, or, for at-large legislative body races, the number of applicants is no more than twice the number of seats, no primary shall be held and those persons shall be deemed to be nominated. In the general election, the nominee receiving the highest number of votes for each office shall be elected, or, in the case of at-large election for legislative body members, a number of nominees receiving the highest number of votes equal to the number of vacancies on the legislative body shall be elected (KRS 83A.170). KRS 83A.045 permits cities of the fourth through sixth classes to forgo non-partisan primaries. In such cases, all candidates must file their nomination papers no later than the second Tuesday in August before the day fixed by KRS Chapter 118 for holding a regular election.

If a city does not adopt the provisions of KRS 83A.170, the election of officers shall be governed by the general elections laws as provided in KRS Chapters 116 through 121 (KRS 83A.050).

Vacancies. A permanent vacancy on the legislative body shall be filled within 30 days by the legislative body. If it is not filled within that period, the legislative body loses the power to fill the vacancy and it may be filled only by the Governor.[40] If there are more vacancies than one, they shall be filled serially, so that the earlier appointees may vote on the later appointments. As long as one member remains on the legislative body, the legislative body has the power to fill vacancies.[41] If all seats become vacant, the Governor shall appoint a sufficient number of members to constitute a quorum, and such members shall then appoint persons to the remaining vacancies. The legislative body has no power to fill a vacancy until such vacancy actually occurs[42] (KRS 83A.040). Any person appointed to fill a vacancy shall serve only until the next regular election, unless such election occurs less than three months after the vacancy occurs. At such election a person shall be elected to fill the term remaining. If there is less than three months between the vacancy and the election, the appointee shall serve until the second succeeding election, at which time the position would be filled for any remaining portion of the original term (Ky. Const., Sec. 152). When legislative body members are elected on a non-partisan basis pursuant to KRS 83A.170, additional requirements apply. If the vacancy occurs more than 134 days before the date of the primary election, candidates seeking election to the vacated office must be nominated in the primary and be elected in the general election in accordance with KRS 83A.170. If the vacancy occurs 134 days or fewer prior to the primary, candidates do not run in the primary, but run only in the general election as prescribed in Kentucky Constitution, Section 152. However, to get on the ballot for the general election, a candidate must follow the procedures required of candidates seeking nomination pursuant to KRS 83A.045, 83A.175, 118.365, 118.375 and 83A.047 (KRS 83A.165). Temporary vacancies on the legislative body are not filled.

Removal. Except in cities of the first class, a member of the legislative body may be removed for reasons of "misconduct, incapacity, or willful neglect in the performance of the duties of his office." The member shall be afforded the right to a public hearing and may appeal the decision of the body to the Circuit Court. A unanimous vote of the members of the body,

excluding the member who is the subject of the removal action, is necessary for removal (KRS 83A.040).

In cities of the first class, there is no provision for removal of an alderman except by impeachment by the General Assembly, since KRS 83A.040 is made specifically inapplicable to cities of the first class and KRS 83.660, which gives the board of aldermen the power to remove city officers, applies only to executive and ministerial officers, and not to legislative officers.

Any member of the board of aldermen in a city of the first class may be punished for disorderly conduct by a vote of the board (KRS 83.470).

Compensation. The compensation of members of the legislative body shall be fixed not later than the first Monday in May in the year of their election. The compensation shall not be changed during the term of the members (KRS 83A.070). The compensation of a legislative body member may not exceed the rate set by the Department for Local Government (KRS 83A.075). The discussion of Section 246 of the Kentucky Constitution in Chapter II covers limitations on the amount of compensation which may be paid. Elected officers may be paid by salary or on a per diem basis. This change came in response to an Attorney General's Opinion that said members may not be paid on a per meeting basis.[43]

Organization Plans

Three basic organizational plans may be adopted by cities regardless of class. Those three plans are:

(1) Mayor-Council or Mayor-Alderman, limited to cities of the 1st class;
(2) Commission; and
(3) City Manager.

It is important to emphasize that, regardless of the plan a city chooses, all cities possess basically the same broad powers, those granted by home rule (KRS 82.082). When a city changes its organizational plan, it is changing only its organizational structure, not its governing authority. Under the different plans, the powers remain the same, but are merely distributed differently. Table 4 shows the differing distributions of powers.

TABLE 4

DISTRIBUTION OF EXECUTIVE AND LEGISLATIVE POWERS

Power	Mayor-Council	Commission	City Manager
Executive authority	M	C	C
Supervise employees	M	C	CM
Appoint officers	M*	C	C
Hire employees	M	C	C
Fire officers and employees	M	C	C
Liaison with local government	M	M	CM
Execute contracts	M	M	M
Propose budget	M	C	CM
Promulgate administrative procedures	M	C	CM*
Preside over council	M	M	M
Legislative authority	C	C	C
Establish offices	C	C	C
Adopt budget	C	C	C
Establish rules for public health, safety and welfare	C	C	C
Investigate city activities	C	C	C
Remove elected officers	C	C	C
Appoint mayor pro tem	M	C	C

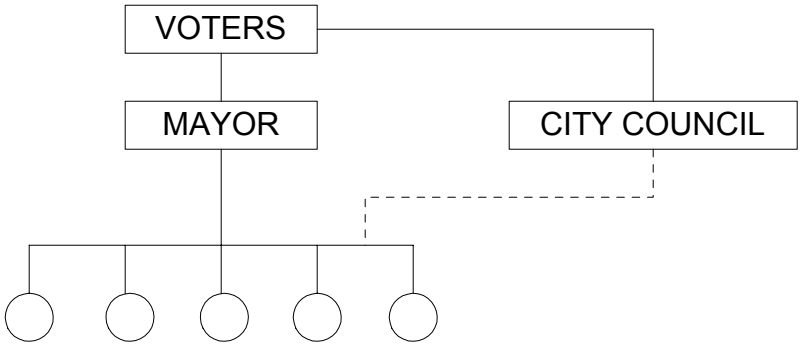
M = Mayor
C = Council, Commission or Board of Commissioners
CM = City Manager

* with approval of C

Mayor-Council Plan

The mayor-council plan is the most common structure for governance used by cities in Kentucky and in the United States. The distinguishing characteristic of the plan is a strict separation of powers between executive and legislative branches, as shown in Figure 4.[44]

FIGURE 4
MAYOR-COUNCIL PLAN



Mayor. The executive authority of the city is vested in the mayor, whose powers and duties are as follows: he shall

(1) enforce the mayor-council plan, city ordinances and orders, and applicable state statutes;
(2) supervise all city departments and the conduct of all city employees;
(3) maintain liaison with local governments with respect to all inter-local contracting and joint activities;
(4) report no less than annually to the city council regarding the activities and condition of the city;
(5) promulgate procedures for administering city government, subject to disapproval by the council;
(6) preside at all meetings of the city council, but shall not be a member of the council nor have a vote, except to break a tie;
(7) make or execute all bonds, notes, contracts, and written obligations of the city;
(8) be the appointing authority for all city employees, except for the staff of the city council; and
(9) may administer official oath to any elected or appointed officer of the city. [KRS 83A.130(3), (4), (5), (8), (9)]

Additionally, since the mayor is the executive authority, he possesses the power to appoint all city officers, subject to approval by the council (discussed further in Chapter VII), and he is charged with preparation and administration of the city budget (discussed further in Chapter VI).

The mayor possesses a strong veto power over all ordinances passed by the city council; however, if he fails to either sign or veto an ordinance within ten days, it shall become effective without his signature. If the mayor vetoes an ordinance, he shall return it to the council with a statement of his objections. The mayor's veto may be overridden by the council on a vote of one more than a majority of the membership [KRS 83A.130(6)].

The mayor may delegate his powers and duties to subordinate officers and employees, and such delegation shall be by executive order. All executive orders shall be kept in a permanent file [KRS 83A.130(7)].

When the mayor is temporarily absent from the city or otherwise "unable to attend to the duties of his office," he may appoint a person to perform his duties, except for his duty to preside over the council, in order to provide for the orderly continuation of the functions of city government. The choice for substitute mayor is not limited to members of the council or even to city officers, although approval of ordinances or promulgation of administration procedures may be delegated only to elected officers. The mayor may rescind any action taken by the acting mayor within 30 days after such action, with approval of the council. If the mayor's disability continues for 60 consecutive days, the council may declare the office to be vacant, and appoint a new mayor pursuant to KRS 83A.040 [KRS 83A.130(10)].

City Council. Legislative power is vested in a unicameral legislative body called the city council, and the council may not perform any executive function except as expressly permitted by statute [KRS 83A.130(11)]. The size of the city council depends upon the class to which the city belongs:

(1) City of the first class—12 members;
(2) Cities of the 2nd, 3rd, and 4th classes—6 to 12 members, as determined by the council, by ordinance;
(3) Cities of the 5th and 6th classes—6 members (KRS 83A.030).[45]

The council shall hold regular meetings, no less than monthly, at such times and places as fixed by ordinance. Special meetings of the council may be called by the mayor or by a majority of the members. Sufficient notice of such meetings must be given, to comply with the provisions of KRS Chapter 61, the open meetings law (See Chapter III). Only business specified in the call may be considered at a special meeting. Minutes shall be kept of the proceedings of all meetings of the council. The minutes shall be signed by the city clerk and the presiding officer. The mayor shall preside at meetings. The council may set by ordinance the manner in which a member of the council shall be selected to preside in the absence of the mayor (KRS 83A.130).

The council possesses only legislative powers. The council:

(1) establishes all appointive offices and their duties and responsibilities;
(2) provides for sufficient revenues to operate the city, and appropriates all such funds in an annual budget;
(3) establishes codes, rules and regulations for the public health, safety and welfare [KRS 83A.130(12)];
(4) may investigate all activities of city government, and in furtherance of such investigation may require any officer to submit a sworn statement regarding the performance of his duties; if the officer under investigation is under the jurisdiction of the mayor, the mayor shall be given written notice and shall have the right to review any statement to the council and to appear on behalf of any department, office, or agency [KRS 83A.130(13)].

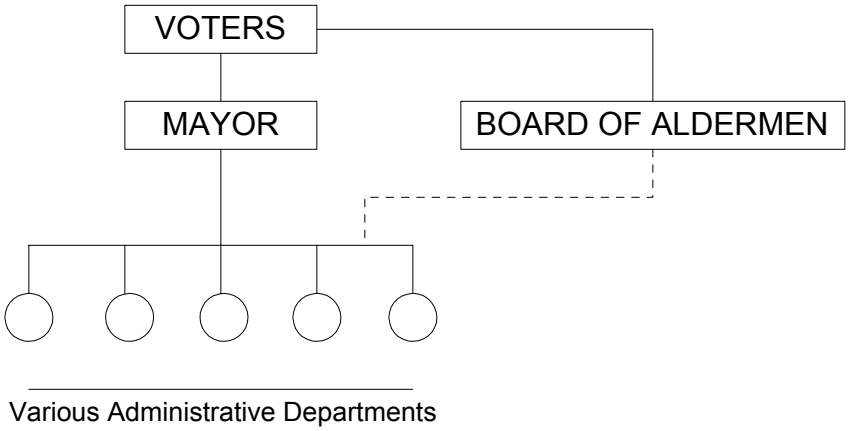
Mayor-Aldermen Plan in Cities of the First Class

KRS 83A.020 specifically excludes cities of the first class operating under the KRS Chapter 83 mayor-aldermen plan from the provisions of the mayor-council plan set forth in KRS 83A.130. Generally, the provisions retained in KRS Chapter 83 relate only to the organizational structure of cities of the first class. The provisions of KRS Chapter 83A governing elections,

officers, procedure in the legislative body, i.e., KRS 83A.010 through 83A.120 and KRS 83A.160 and 83A.170, are applicable to cities of the first class, except where specifically excepted.

Elected officials in a city of the first class are the mayor and a twelve-member unicameral legislative body. The organization of the government of a city of the first class is diagrammed in Figure 5.

FIGURE 5
MAYOR-ALDERMAN PLAN



There is a strict separation of powers between the executive and legislative branches and neither branch may exercise any power properly belonging to the other, unless specifically authorized by statute (KRS 83.430).

Mayor. The executive power of a city of the first class is vested in the mayor, who is the chief executive officer, and in such departments and agencies as are appointed by the board of aldermen (KRS 83.530 and 83A.010).

When the mayor is temporarily absent or disabled, the president of the board, who is elected by the board, shall act as mayor pro tem. The board may provide the president with additional compensation while he serves as mayor pro tem, and may deduct such increment from the compensation paid the mayor (KRS 83.560).

The mayor, like all executive and ministerial officers, is subject to removal for cause. The removal is by impeachment before the board of aldermen. The procedure is initiated by five or more members of the board preferring charges against the mayor. Upon the preference of charges by the five or more members, the remaining members, sitting as a court under oath, shall try the charge. While the statute is silent on the minimum number of members necessary to try the charges, a quorum is necessary for the board to take any action. Only a simple majority is needed for removal. If the mayor is removed, he may appeal to the Circuit Court (KRS 83.660).

KRS 83.580 is the general statement of the powers and duties of the mayor. The powers and duties are divided into mandatory and permissive categories.

The mayor shall:

(1) cause the ordinances and laws to be executed and enforced;
(2) keep the board informed in yearly statements of the financial and general condition of the city and provide whatever related information the board may request;

(3) recommend legislation by written message to the board;
(4) fill all executive and ministerial offices and all other positions, the filling of which is not otherwise provided, subject to approval of the board;
(5) exercise general supervision over all executive and ministerial officers, and see that their duties are honestly performed;
(6) send by January 31st of each year to the Department for Local Government prescribed city information which shall include:
    a. names of the mayor and members of the board of aldermen;
    b. clerk of the board of aldermen;
    c. city treasurer;
    d. city attorney;
    e. finance director;
    f. police chief;
    g. fire chief;
    h. public works directors;
    i. correct name, mailing address and phone number of the city; and
    j. name and phone number of contact person who may be reached between 8:00 a.m. and 4:30 p.m.; and
(7) appoint to those seats which are not subject to prior qualification on a board or commission, an equal number of members from each county commissioner's district into which the authority of the board or commission extends.

The mayor may:

(1) remove from office, by written order, any officer appointed by him, unless otherwise provided by law;
(2) appoint his personal staff and remove them at pleasure;
(3) require information concerning duties from any executive and ministerial officer; and
(4) administer oaths.

The mayor may recommend reorganization of any agency or administrative department under his control. A proposed reorganization may only be effected by ordinance. The mayor may also appoint advisory or study commissions to assist him in the task of reorganization (KRS 83.590).

Ordinances or resolutions passed by the board, except a resolution to adjourn, are subject to veto by the mayor. Appropriation ordinances are subject to a line item veto power.

The mayor's veto power may be exercised only actively; if he fails to sign or disapprove a measure, it shall become effective without his signature, on the day the board holds its next meeting, if at least three days have elapsed since its presentation to the mayor (KRS 83.500). The board may override a veto at not later than the second meeting after a measure has been returned to it, by a vote of two-thirds of the membership.

As stated earlier, KRS 83.580(1)(d) gives the mayor the power to fill all vacancies, subject to the approval of the board. However, KRS 83.570 gives the mayor an unrestrained power to appoint and remove at pleasure all departments heads.

Board of Aldermen. The legislative authority of a city of the first class is vested in the twelve-member board of aldermen (KRS 83.440 and 83A.030). Members are elected by ward pursuant to KRS 83A.100.

There is no provision for removal of aldermen except for impeachment by the General Assembly. KRS 83.660, which gives the board the power to remove city officers, applies only to executive and ministerial officers, not to legislative officers. KRS 83A.040 does not apply to cities of the first class.

Any member of the board may be punished for disorderly conduct (KRS 83.470).

The first meeting of the board is to be held within the seven days after the members take office. Thereafter, the board is to hold two regular meetings each month. The mayor may call special meetings at any time.

The location of the meetings shall be in the city, and shall be fixed by ordinance and not changed, except by a vote of two-thirds of the board (KRS 83.480).

The majority of the membership of the board shall constitute a quorum. A lesser number may adjourn from day to day. The board shall adopt rules to govern proceedings and may prescribe fines to enforce the attendance of members (KRS 83.480).

KRS 83.500 sets out various procedural requirements for the enactment of ordinances and resolutions by the board:

Step 1. The ordinance or resolution shall be introduced. Ordinances shall encompass only one subject and that subject shall be reflected by the title.

Step 2. The ordinance or resolution shall be read in full at a succeeding meeting. Free discussion shall be permitted. The ordinance or resolution may be put to a vote.

Step 3. Any ordinance or resolution enacted by the board, except for a resolution to adjourn, shall immediately be presented to the mayor for his signature or veto. If the mayor fails to take any action on an ordinance or resolution presented to him by the time of the next regular meeting of the board, and at least three days have elapsed since presentation, the ordinance or resolution shall become effective without his signature.

Step 4. If the mayor vetoes the ordinance or resolution, he shall return it to the board and enter his objections in the journal. If the board reconsiders the vetoed measure, it must do so within two meetings after the measure is returned. A two-thirds majority of the board is needed to override the veto. If the veto is overridden, the measure shall become effective without the mayor's signature.

Any ordinance enacted may be repealed or amended through the enactment of another ordinance.

KRS 83A.060 (discussed herein) also provides a procedure for the enactment of ordinances which is applicable to all cities and forms of city government. There is no conflict between the statutes, except for the majority required to override a veto, and they may easily be read together.

This does not mean that cities of the first class may ignore KRS 83A.060; instead, it means they must follow the procedure set out therein and in KRS 83.500.

The board of aldermen is granted by KRS 83.520 broad home rule powers, as discussed in Chapter IV.

The board of aldermen shall establish such executive departments of the city as it "deems necessary and proper for the efficient administration of governmental matters of the city" (KRS 83.570). The board shall also designate the duties and powers of those offices. The offices must be under the supervision of a director, who shall be appointed by the mayor. The directors shall

hold office until they resign or are removed. They shall appoint and remove at pleasure (unless Civil Service laws apply) the employees of their offices (KRS 83.160).

All offices and agents of the city not required by law to be elected or appointed in any other manner shall be elected or appointed as prescribed by the board (KRS 83.610).

It is also the board which is charged with implementing any reorganization of city agencies or departments suggested by the mayor (KRS 83.590). Additionally, the board must approve all appointments made by the mayor unless otherwise provided (KRS 83.580).

Unless otherwise provided, the board may impeach and remove any executive or ministerial officer of the city. Charges may be preferred against any officer by either the mayor or two members of the board, or, if the charges are against the mayor, five members of the board. The board, sitting as a court under oath, shall try the charge. Any person removed may appeal to the Circuit Court (KRS 83.660).

Commission Plan

The commission plan is a significantly different organizational arrangement than the mayor-council plan. Instead of powers being divided among the executive and legislative branches, all executive, legislative and administrative powers are vested in the unicameral legislative body called the city commission.[46]

The organizational chart for a commission plan is shown in Figures 6 and 7. Two options are available, since the commissioners may delegate their administrative duties to a CAO (City Administrative Officer).

The commission plan government is composed of a mayor and four commissioners, who together make up the city commission [KRS 83A.140(2)].

Mayor. All legislative, executive, and administrative powers of the city are vested in the commission. Other than acting as the titular head of the city, the mayor's only formal duties are presiding at meetings of the commission, calling special meetings of the commission, administering oaths, and executing and signing all bonds, contracts, notes, and written obligations of the city. As a member of the commission, however, the mayor is a fully participating member with the right to vote on all matters.

Unlike the mayor in the mayor-council plan, the mayor may not appoint a person to fill in for him while he is temporarily absent. Instead, the commission shall designate one commissioner mayor pro-tem. If the mayor's disability continues for 60 consecutive days, the commission may declare the office to be vacant and appoint a new mayor pursuant to KRS 83A.040 [KRS 83A.140(4)].

City Commission. All legislative, executive, and administrative power of the city is vested in the city commission. Commissioners have two separate roles. First, as a group they perform corporately the familiar legislative functions as well as executive functions. Second—and this is the unique aspect of the commission plan—the commission members, individually, perform administrative functions.

FIGURE 6
COMMISSION PLAN
(with no CAO)

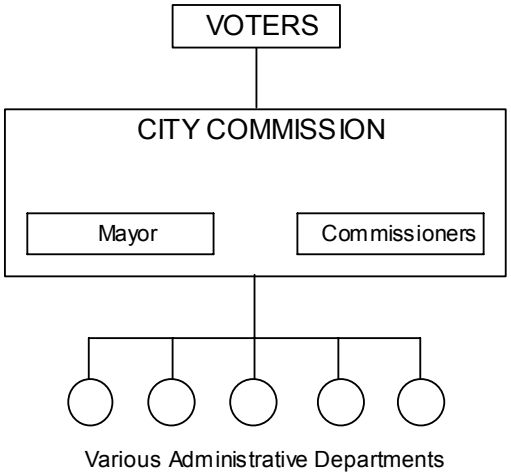
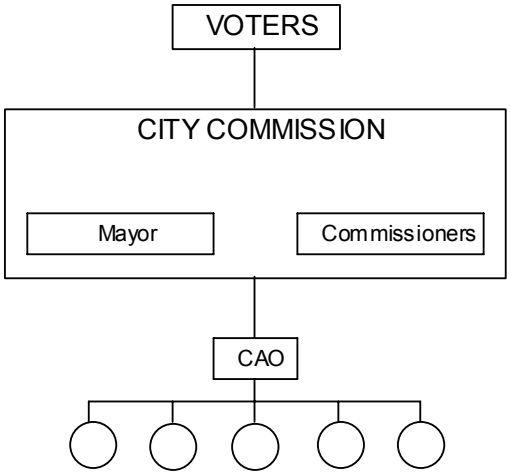


FIGURE 7
COMMISSION PLAN
(with CAO)



In its legislative/executive configuration, the commission:

(1) shall enforce the commission plan, ordinances, orders, and applicable statutes;
(2) shall maintain liaison with other units of local government respecting interlocal contracting and joint activities;
(3) shall supervise all departments of the city and the conduct of the officers and employees, and may require any officer or employee to submit a sworn statement regarding his performance;
(4) shall prepare a report on the condition of the city not less than annually;
(5) shall classify the various administrative and service functions of the city under departments and prescribe functions and duties;
(6) shall establish all appointive offices;
(7) shall promulgate codes, rules, and regulations necessary for the public health, safety, and welfare of the residents of the city;
(8) shall provide for sufficient revenue to operate the city and appropriate such funds in an annual budget;
(9) shall promulgate procedures to insure the orderly administration of city government;
(10) may declare the office of mayor to be vacant if his disability continues for 60 consecutive days and appoint a new mayor;
(11) shall, at its first meeting, delegate which commission member shall have supervision over each city department; or may delegate responsibility for overall supervision to a CAO (KRS 83A.140).

The commission is to meet at least monthly, at such times and places as are fixed by ordinance. Special meetings may be called by the mayor or a majority of the commission. Only subjects specified in the call may be considered at a special meeting. Minutes of all meetings shall be taken and signed by the presiding officer and the city clerk [KRS 83A.140(7)].

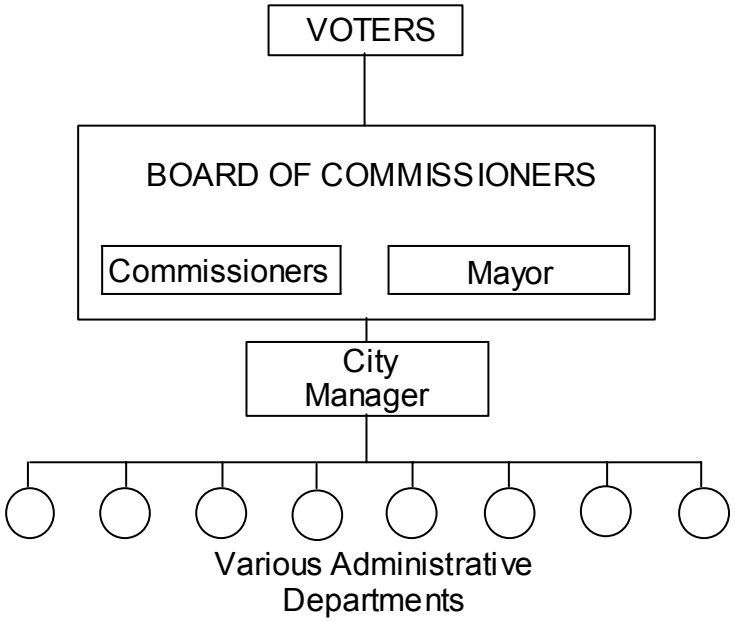
In a model commission plan the commissioners act in their individual capacities as heads of the various city departments. KRS 83A.150 merely states that the commission shall create the necessary city departments and delegate a commission member to have “supervision” over each department. The commissioners may delegate their responsibility for supervision of the city departments to a CAO established pursuant to KRS 83A.090 [KRS 83A.140(6)].

City Manager Plan

The city manager plan is similar to the commission plan, in that it provides for a mayor and four commissioners, who, together, make up the board of commissioners, which possesses the legislative and executive powers of the city, but it differs by vesting the administrative powers in an appointed official called the city manager (KRS 83A.150).[47]

Figure 8 illustrates the organizational chart for the city manager plan.

FIGURE 8
CITY MANAGER PLAN



Mayor. The mayor in the city manager plan, outside of his position as a member of the board of commissioners, is only the titular head of the city. KRS 83A.150 explicitly states that aside from being recognized as the head of government by the governor for purposes of military law, the mayor shall have no regular administrative duties. All executive power is vested in the board. The only duty of the mayor outside his position as a member of the board is to make and execute all bonds, notes, contracts, administer oaths, and written obligations authorized by the board. As a member of the board, he is the presiding officer [KRS 83A.150(3)].

Like his commission plan counterpart, the mayor cannot appoint someone to fill in for him while he is temporarily absent, but instead, a mayor pro-tem is elected from among the commissioners to serve in his absence. If the mayor's disability extends for 60 consecutive days, the board may declare the office to be vacant [KRS 83A.150(3)].

Board of Commissioners. The board of commissioners is composed of four commissioners and the mayor (KRS 83A.020). All legislative and executive authority is vested in the board. The commission:

(1) shall establish all appointive offices;
(2) shall promulgate codes, rules, and regulations necessary for the health, safety and welfare of the residents of the city;

(3) shall provide for sufficient revenue to operate the city and appropriate such funds in an annual budget;
(4) may require any officer or employee of the city to make a sworn statement regarding the performance of his official duties; and
(5) shall create the office of city manager and set the qualifications for office [KRS 83A.150(5), (6), (7)].

The board is to meet at least monthly, at such times and places as are fixed by ordinance. Special meetings of the board may be called by the mayor or a majority of the board. No business other than specified in the call shall be considered at the special meeting. The mayor presides at meetings, and in his absence, the mayor pro-tem. Minutes shall be kept of the proceedings of the board and shall be signed by the presiding officer and the city clerk [KRS 83A.150(3), (4)].

City Manager. It is mandatory in a city operating under the city manager plan that the board of commissioners establish the office of city manager.[48] The manager is appointed by vote of a majority of the members on the board for an indefinite term and shall be removable only by a vote of a majority of the board. The manager may be removed only after the following procedure. Thirty days prior to the proposed date of termination, the board shall adopt a preliminary resolution setting out the reasons for dismissal. The preliminary resolution may suspend the manager, but he shall continue to be paid his compensation for the next calendar month following the adoption of the resolution. Upon receipt of the resolution, the manager may request a full public hearing before the board. If requested, the board shall hold such hearing not earlier than 20 days after the request nor later than 30 days. The board may then adopt a resolution of removal if necessary [KRS 83A.150(8)].

The board sets qualifications for the manager, which shall include "professional training or administrative qualifications, with special reference to actual experience in or knowledge of accepted practice regarding duties of the office [KRS 83A.150(7)]."

The manager is the chief administrative officer of the city, and exercises the following executive powers and whatever other powers may be delegated to him by ordinance. The manager:

(1) shall have direct responsibility to the board for the proper administration of all duties assigned to him;
(2) shall recommend personnel decisions to the board for its action;
(3) may appoint persons to temporary positions without approval of the board subject to such conditions as may be imposed by the board;
(4) shall prepare and submit a budget proposal to the board and be responsible for its administration once adopted;
(5) shall keep the board advised of the financial condition of the city and make recommendations as he deems advisable;
(6) shall maintain liaison with other local governments regarding interlocal contracting and joint activities;
(7) shall supervise all city departments and the conduct of the employees and officers, and require reports from such as deemed desirable;
(8) shall enforce the city manager plan, ordinances, and applicable statutes;
(9) shall promulgate procedures to insure the orderly administration of the functions of the city, subject to approval by the board [KRS 83A.150(7), (9)].

The city manager may delegate powers and duties to subordinate officers, and all such delegations shall be by municipal order [KRS 83A.150(9)].

Assignation of Plan

As of the effective date of the Municipal Code (July 15, 1980), all cities in Kentucky, except for Louisville and Lexington-Fayette Urban-County, ceased being organized in accordance with the old law, and became organized under one of the three organizational plans. Cities of the second through the fifth classes which were organized under the mayor-council plans contained in KRS Chapters 84 to 87 were organized as mayor-council cities pursuant to KRS 83A.130. Cities organized under the commission plans contained in KRS 89.110-89.380 and cities of the sixth class organized under the Board of Trustees plan of KRS Chapter 88 were organized as commission plan cities pursuant to KRS 83A.140. Cities organized under the city manager plan of KRS 89.390-89.690 were organized as city manager plan cities pursuant to KRS 83A.150.

Procedure to Change Plan

A city may change its plan of government, if approved by the residents of the city, pursuant to the procedure outlined for public questions under KRS 83A.120. Any city may elect to be governed under any of the three plans. However, a city may not change its plan of government more often than every five years.

When a change has been approved by the voters, the effective date of the change will depend upon when the proper number of legislative body members can be secured. If the new plan results in a reduction of members, the effective date will be the date of the expiration of the terms of the members, if they are all elected at the same time, or if the members are elected on a staggered basis, when the terms of enough members have expired to have compliance. If the change results in an increase in membership of the legislative body, the effective date shall be at the time a sufficient number of members can be elected. A city shall be in compliance in no more than two years after the adoption of the new plan by the voters.

After the change, the corporate entity of the city shall remain the same, and all statutes or ordinances in force not inconsistent with the new plan shall remain in effect (KRS 83A.160).

CHAPTER VI

FINANCE AND REVENUE

A city's capacity for the exercise of any municipal power is dependent upon not only a grant of power, but upon adequate revenue. The broadest home rule grant would be meaningless if a city had no financial resources. A city at its most basic level is, after all, nothing more than a convenience, enabling citizens to take collective action for their joint welfare. Thus the individual need not directly contract for police and fire protection, for garbage pick-up, for sewers, and so on; he merely has to pay taxes, fees, assessments to one entity, which then dispenses his and his fellow citizens' money.

This chapter is concerned with the three major areas of municipal finance:

(1) Financial administration: how cities plan their financial affairs;
(2) Taxation and fees: the sources of most of a city's operating revenues; and
(3) Bonding: how a city borrows money.

Financial Administration

KRS Chapter 91A establishes an orderly code of financial administration which requires that all cities, regardless of class or size, maintain certain minimum standards of financial responsibility and accountability. The three main financial requirements of KRS Chapter 91A are:

(1) A city's funds may only be expended in accordance with an annual budget enacted by the legislative body (KRS 91A.030);
(2) A city must maintain financial records in accordance with generally accepted principles of governmental accounting (KRS 91A.020); and
(3) A city's financial records must be periodically audited by an independent auditor (KRS 91A.040).

Budget

The budget is the fundamental tool for efficient financial administration. "Budget" is defined by statute as being "a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year" (KRS 91A.010). Perhaps a clearer definition of a budget is that it is "a legally adopted plan of financial operation embodying estimates of proposed expenditures for specific purposes and the proposed means of financing them."[49] A budget requires a city to plan its finances—to look ahead and estimate anticipated revenues for the coming year and estimated expenses, and reconcile the two amounts. Once prepared, a budget serves as a guide for the conduct of a city's financial affairs.

Budget Document. A city's budget must be contained in an ordinance adopted by the legislative body. It must cover only one fiscal year, which is defined as "the accounting period for the administration of fiscal operations" (KRS 91A.010). The budget shall cover every governmental or proprietary fund of the city. Assets held in trust or as agent for others need not be included, although they may be [KRS 91A.030(1), (2), (4)].

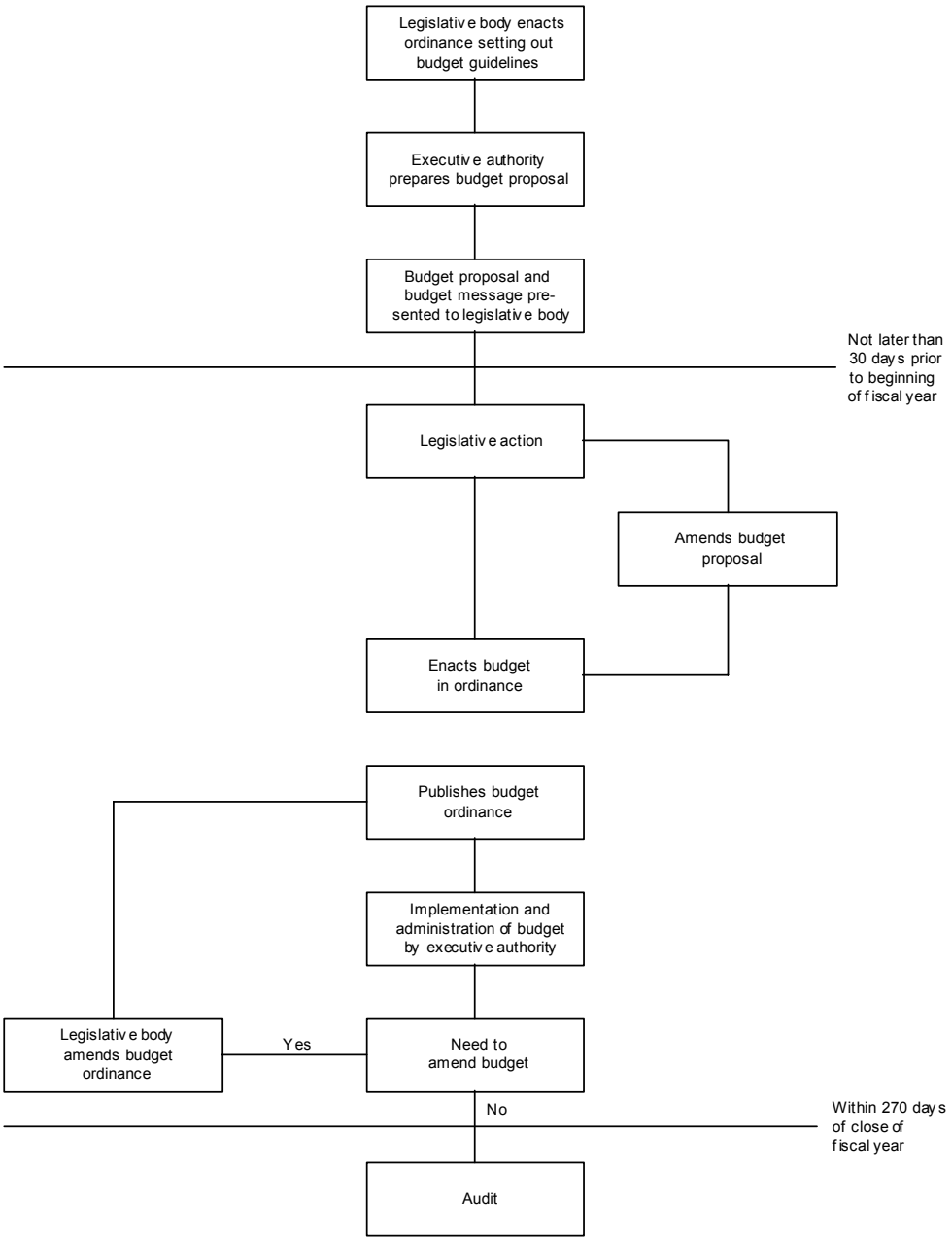
The actual form the budget document is to take is not specified by statute, but is to be determined by the legislative body, except that, to the extent practical, it shall be consistent in form with the accounting system used by the city. While the statute is silent as to how specific

the budget need be, it is clear that expenditures at a minimum, should be, broken down by fund, since the statute does state that no monies from a fund may be expended except in accordance with a budget.

Two specific requirements are made of the budget ordinance. One, it may not be a deficit budget; that is, it may not provide for appropriations to exceed revenues in any one fiscal year. Second, the full amount estimated to be required for the payment of the debt service (interest plus amortization) on the city's bonded indebtedness during the fiscal year shall be appropriated "for all governmental fund types" [KRS 91A.030(8), (9)].

Preparation. The budget proposal shall be prepared by the executive authority of the city in mayor-council, mayor-aldermen and commission plan cities and the city manager in city manager plan cities [KRS 91A.030(11)]. The executive authority is the mayor in mayor-council or mayor-aldermen plan cities, and the legislative body in commission plan cities. The budgetary process is presented in a flow chart in Figure 9.

FIGURE 9
CITY BUDGETARY PROCESS



See Figure 1 for steps involved in the enactment of ordinances by city legislative body

The form and detail of the budget proposal shall be specified by ordinance. The proposal must be presented to the legislative body not later than June 1, 30 days prior to July 1, the beginning of the fiscal year. Along with the budget proposal, the executive authority or city manager shall present a budget message to explain the proposal to the legislative body. The budget message shall at a minimum:

(1) contain an explanation of the goals set in the budget for the year;
(2) explain important features of the activities funded in the budget;
(3) set forth the reasons for any changes in the previous year's program goals, programs or appropriation levels; and
(4) explain any major changes in fiscal policy [KRS 91A.030(6), (7)].

Adoption. The legislative body of the city shall adopt the budget by ordinance by July 1. The body need not adopt the proposal exactly as presented, but is free to change it. At any time after the adoption of the budget ordinance the legislative body may amend the budget by adopting an amending ordinance. However, in no case may expenditures appropriated exceed estimated revenues in any one fiscal year. If the legislative body fails to adopt a budget ordinance by the start of a fiscal year, the budget ordinance of the previous year shall have full force, as if it had been readopted for the new fiscal year [KRS 91A.030(3), (8), (10)].

The budget is enacted in the same manner as other ordinances. Once enacted, the budget becomes a binding document governing the financial transactions of the city. No agency, officer or employee of the city may legally commit the city to pay more than is appropriated in the budget. Any contract, agreement or obligation attempting to so obligate the city is void. No negotiable instrument purporting to pay out more money than is appropriated for an item is valid beyond the unexpended balance of the appropriations made for such purpose [KRS 91A.030(13)].

Administration. The administration and implementation of the budget ordinance shall be the responsibility of the executive authority of the city. KRS 83A.150 contradicts KRS 91A.030, because it states that in city manager cities the city manager (who is not the executive authority) shall be responsible for the administration of the budget. As part of that responsibility, the executive authority (or city manager) shall prepare and submit to the legislative body a quarterly operating statement. Such statement shall include "budgetary comparisons of each governmental fund for which an annual budget has been adopted" [KRS 91A.030(11)]. An interim operating statement is generally intended for internal use and compares actual financial results in the period with what had been estimated in the budget document. The system a city utilizes for the administration of its budget shall, to the extent practical, be consistent with the city's accounting system [KRS 91A.030(12)].

Accounting System

KRS 91A.020 requires that every city maintain an accounting system in accordance with "generally accepted governmental accounting principles" and that the system be operated on a "fund basis." The "accounting system" is "the total structure of records and procedures which discover, record, classify, summarize and report information on the financial position and results of operation of a government or any of its funds or organizational components."[50]

Generally accepted governmental accounting principles (GAAP) are uniform procedures for the establishment and operation of the accounting system. GAAP are defined by KRS 91A.010 to mean "those standards and procedures promulgated and recognized by the Governmental Accounting Standards Board." This definition recognizes that the GAAP definition may change and therefore keys the term to the definition as used by practitioners. As formulated by the National Council on Governmental Accounting, there are twelve basic principles of accounting and reporting applicable to governmental units. It is the opinion of the Council that "adherence to...[GAAP] assures that financial reports of all state and local governments—regardless of jurisdictional legal provisions and customs—contain the same types

of financial statements and disclosures for the same categories and types of funds and account groups, based on the same measurement and classification criteria."[51]

The main requirement of GAAP for an accounting system is that it be organized on a fund basis. KRS 91A.020 specifically requires cities to keep their accounts on a fund basis as well. "Fund" is defined by GAAP as "a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources together with all related liabilities."[52]

Fund accounting is a very different concept from that used for a private business, which is typically accounted for as a single entity. Governmental accounting segregates the finances of a city into a number of self-contained funds; "thus from an accounting and financial management viewpoint, a governmental unit is a combination of several distinctly different fiscal and accounting entities, each having a separate set of accounts and functioning independently of other funds and account groups."[53]

GAAP recognize three basic categories of funds: governmental funds, proprietary funds and fiduciary funds.

Governmental funds are those used to account for the basic municipal functions of a city, and will make up the greatest part of a city's financial resources. There are five basic types of governmental funds which should be used by local governments:

(1) The general fund. This is the basic fund which is used to account for all of a city's financial resources except those accounted for in one of the specialized funds.
(2) Special revenue fund. This fund is used when there is a need to account separately for the proceeds of some specific revenue source which is restricted to certain purposes, e.g., road aid monies.
(3) Capital projects fund.
(4) Debt service fund.
(5) Special assessment fund.

Proprietary funds are designed to account for a city's activities which are of a commercial nature, especially with regard to those activities for which net income is to be measured. There are two basic types of proprietary funds: (1) enterprise funds, which are for those activities of a business nature, and (2) internal service funds, which are used with regard to interdepartmental services which are handled on a cost reimbursement basis.

Fiduciary funds are used to account for those resources held by the city as trustee or agent for others. The major type of this category is a trust and agency fund.

In addition to funds, a city's general fixed assets and long-term debt are accounted for in account groups. Account groups are not funds, since listings of fixed assets and long-term debt "do not reflect available financial resources and related liabilities—but are accounting records."[54]

It is not necessary that a city possess all of the funds mentioned above. In many cases, for example, a city will have no special assessment revenues and thus will not need such a fund. The general rule is to establish the minimum number of funds which will adequately reflect the finances of the city.

It should be noted that the requirement for a separate accounting for each fund just refers to the identification of accounts in the accounting system and does not refer to the physical segregation of assets. It is not necessary to have each fund in a separate bank account.

In addition to complying with generally accepted governmental accounting principles, a city shall maintain its accounting system in such a way as to determine compliance with statutory provisions (KRS 91A.020).

Audit

An audit is "a methodical examination of resources. It concludes with a written report of its findings. An audit is a test of management's accounting system to determine the extent to which internal accounting controls are both available and being used."[55]

KRS 91A.040 requires all cities of the first through fifth classes to have an annual audit of all funds of the city. Cities of the sixth class must have an audit performed after the close of each odd-numbered fiscal year. After the close of each even-numbered fiscal year, each city of the sixth class shall prepare a financial statement as prescribed by statute. Cities of the sixth class which receive and expend in any fiscal year less than $75,000 from all sources and which have no outstanding long-term debt shall not be required to audit each fund of the city for that year, but instead shall prepare a financial statement as prescribed by statute. Upon completion of the audits or financial statements, each city is required to send a specified number of copies to the Kentucky Department for Local Government for information purposes.

Regardless of whether a city prepares an audit or financial statement, all cities must within 90 days after each fiscal year publish a statement that the financial statement required by KRS 424.220 has been prepared and is on file with each newspaper, news service and local T.V. and radio station which has requested copies [KRS 91A.040(6)].

Any city which must have an annual audit shall contract with a certified public accountant or the state auditor of public accounts to perform the audit. The audit must be completed by February 1st immediately following the year to be audited. The contract must at a minimum require the auditor to:

(1) examine the year-end balance sheets for all governmental, proprietary and fiduciary funds of the city;
(2) examine all local government economic assistance funds and certify that such funds were expended for the purposes intended;
(3) conduct the audit in accordance with generally accepted governmental auditing standards;
(4) prepare a written report which embodies the various financial statements and which expresses his opinion thereon;
(5) "express an overall opinion as to whether the statement of receipts and expenditures presents fairly the financial condition of the city," or explain why such an opinion cannot be expressed;
(6) present the completed audit, with appropriate documentation, to the legislative body at a regular or special meeting; and
(7) provide the auditor of public accounts a copy of the audit and management letters, if requested by the city or the auditor of public accounts.

Upon completion of an audit, each city of the third through sixth classes may choose to publish either the auditor's report or a financial statement. It appears that KRS 91A.040(8) excludes cities of the first or second class or urban-county governments from this option. Therefore, they must always publish their auditor's report.

If a city publishes the auditor's report, the notice must include:

(1) the auditor's cover letter to the city;
(2) the combined balance sheet showing all fund types and account groups;
(3) the combined statement of revenues, expenses and changes in retained earnings/fund balances for all proprietary fund types and similar trust funds;

(4) the combined statement of changes in financial position for all proprietary fund types and similar trust funds;
(5) a statement that a complete copy of the auditor's report is on file at city hall and available for inspection during normal business hours;
(6) a statement that personal copies of the complete auditor's report are available at duplication costs, which shall not exceed 25¢ per page; and
(7) a statement that copies of the financial statement, as required by KRS 424.220, are available to the public at no cost at the business address of the officer who prepared the statement.

If a city, upon completion of an audit, opts to publish the financial statement prepared in accordance with KRS 424.220, it shall do so within 60 days after completion of the audit [KRS 91A.040(8)].

The public notice requirements for all municipal financial data must be fulfilled in accordance with the provisions of KRS Chapter 424.

Except for statutory or judicial requirements or requirements of the Kentucky Legislative Research Commission (LRC) necessary to carry out the purposes of KRS 6.950-6.975, a copy of the audit shall be considered sufficient for any official request for financial data [KRS 91A.040(5)]. 1994 legislation deleted the provision in KRS 6.970 requiring the Legislative Research Commission to publish an annual report of the financial condition of local government.

Official Depositories

The executive authority shall designate one or more financial institutions as the official depository for city funds. Only banks or federally insured savings and loan or trust companies may be so designated. The amount on deposit shall be fully insured. An official depository must be located in the state but is not required to be located in the city.

All city funds not otherwise invested or deposited in a manner authorized by law shall be deposited in the official depositories (KRS 91A.060).

Disbursement of Funds

City funds shall be disbursed by written authorization, i.e., check, signed by the executive authority. The instruments shall set out the name of the payee, the purpose for the disbursement and the fund out of which it is payable. All instruments shall be numbered and recorded (KRS 91A.060).

Intergovernmental Transfers

The legislative body of any city may appropriate city funds to the county in which the city is located to "enable the county to perform proper and necessary governmental functions...which involve the public interest of the citizens of the city." The county in turn may appropriate money to a city for the same purpose. Any city, county or community foundation receiving such money shall account at least biannually to the grantor on the expenditure of the funds (KRS 65.157).

Local governments are permitted to contribute to non-profit corporations (KRS 67.175).

Taxing Powers

Revenue is generated by cities from a number of different sources, which may be broadly classified by its two major purposes: revenue to be used for operation of the city, and revenue

used for capital projects. Revenue for capital projects generally comes from bonded indebtedness and special assessments. Revenue for a city's continuing operation comes from taxation, licenses and fees, and in some cases, short-term borrowing. Federal and state assistance programs contribute monies for both aspects of municipal finance.

The legislation regarding the financial powers of cities is treated separately for cities of the first class and for the other five classes of cities. Table 5 sets out the taxes and license fees specifically authorized by the KRS.

TABLE 5
REVENUE PRODUCING TAXES AND LICENSES*

Description	Class	Citation
All taxes permitted by Sec. 181 of the Ky. Const.	All	92.281
Ad valorem taxes	1st	91.200 91.260
License fees on franchises, businesses, trades, occupations, professions, exhibitions	1st	91.200
Special purposes taxes	1st	91.280
Urban abandoned property	1st	91.285
Special ad valorem tax for specified projects	All	65.125
Ad valorem taxes	2-6	92.280
License fees on franchises, trades, occupations & professions & breeding stock	2-6	92.280
Insurance premium tax	All	91A.080
Supplemental tax for police, fire or garbage collection	3rd & 4th (in counties containing 1st class)	82.095
Band or orchestra tax	2-6	97.610
Coin operated vending or amusement machines	All	137.410
Tax on distilled spirits in bonded warehouses	All	132.150
Tax on operating property of railroads and railways operating in Ky.	All	136.180
Transient room tax	All	91A.390
Special transient room tax for convention centers	All	91A.390(1)
Additional transient room tax for retirement of bonds	Counties containing a city of the 1st class	91A.392
Restaurant tax	4th & 5th (with tourist & convention commissions)	91A.400
Taxable capital of insurance co. which has principal office located in city	All	136.320
Tax on business inventories	All	132.028
License fee on taxicabs, limousines & airport shuttle vehicles	All	186.281
License fee on trucks, truck tractors, semitrailers & trailers	All	186.270
Tax or license fee to operate 911 Emergency Telephone Service	All	65.760
Special ad valorem tax for regional community mental health program	All	210.460
Special tax for purpose of public parks	4th	97.590
Special tax for purpose of war memorial	2-6	97.700

*Excludes taxes collected by city for benefit of special districts, school districts or bond issues.

Cities of the First Class

Fiscal Year. The fiscal year of a city of the first class shall be from July 1 to June 30.

Types of Taxes Permitted. Any city of the first class may raise revenue from ad valorem taxes and from taxes based on income, licenses and franchises. The taxes shall be levied annually by ordinance. For personal property the city may either levy an ad valorem tax or, in lieu thereof, a tax based upon income (though not an income tax per se), licenses or franchise. A city may not levy an income tax. The city may by ordinance exempt manufacturing establishments from taxation for up to five years as an inducement to their locating within the city (KRS 91.260).

KRS 92.281, granting all taxing powers to cities permitted by Section 181 of the Kentucky Constitution, is applicable to cities of the first class.

The board of aldermen shall annually levy a property tax for general city purposes and may make separate annual levies of taxes for specific purposes. In conjunction with the city's authority to levy a property tax, cities of the first class shall have an additional classification of property known as abandoned urban property [KRS 132.012(1)]. The city may levy a separate and higher rate of taxation on such property and in such manner as prescribed (KRS 91.285). The annual tax rate limitations of KRS 132.027 (HB 44) are not applicable to this tax. If the city fails to make a tax levy in any year, the rates of taxation from the previous year shall remain in effect (KRS 91.280).

In addition to an ad valorem tax, a city of the first class may by ordinance "impose license fees on franchises, provide for licensing any business, trade, occupation or profession and the using, holding or exhibiting of any animal, article or thing."

License taxes on a business, trade or profession for revenue purposes are limited to one and one-fourth percent of either wages or net profits earned. License fees for regulatory purposes are not subject to the limitations. License taxes may not be imposed upon companies paying both an ad valorem tax and a franchise tax, or upon various financial institutions, or upon members of the National Guard during active duty or training. The taxes are to be collected by the commissioners for the sinking fund. The proceeds from the license fees levied shall be applied first to pay administration costs and debt service on the long-term debt of the city, and any remaining revenue may then be credited to the general fund of the city (KRS 91.200).

Any city of the first class and the county in which the city is located which have in effect a cooperative compact entered into pursuant to KRS 79.310 shall combine their separately collected occupational license fees and share such revenue in accordance with a formula set out in KRS 79.325. The formula is designed to apportion to the city and the county the same amount of revenue received in the year prior to the compact. If collections exceed that amount, the city is to get a higher percentage of such increase than it would get if the tax were still separately collected. In return the city agrees not to attempt to annex additional territory during the twelve-year life of the compact. Additionally, the funding of joint city-county agencies is restructured.

Collection. The commissioners of the sinking fund shall collect license fees or taxes levied pursuant to KRS 91.200 and all taxes on personal property based on income, licenses and franchises (KRS 91.270). Statutes setting out the structure and powers of the sinking fund were repealed in 1982. All other taxes shall be collected by the agency designated by ordinance to be the collector of taxes.

Delinquent Taxes. For delinquent personal property taxes, the city may impose a five percent penalty, plus interest on the amount of delinquent taxes at a rate of six percent per annum. A lien arises in the amount of the delinquent taxes on the property of the taxpayer and may be enforced in a civil action. The city may also receive a personal judgment against the

taxpayer, should the property prove to be insufficient to satisfy the tax bill (KRS 91.270). For delinquent real property taxes, the city may by ordinance establish penalties and interest to be imposed (KRS 91A.070). A city of the first class may utilize four methods to collect or release its delinquent real property taxes:

(1) The city may enforce the collection of taxes "by all remedies given for the recovery of debt in any court" (KRS 91.570);
(2) The city may enforce its lien upon the property subject to the tax (KRS 91A.070);
(3) A streamlined tax foreclosure method is provided by KRS 91.481-91.527 to be used when there are large numbers of delinquent properties. The procedure permits the city to bring a single in rem action in Circuit Court against any number of parcels of real property. The significance of in rem is that personal service on the taxpayer is not required. Property against which a judgment has been obtained may be sold at a commissioner's sale to satisfy the city's lien. Persons purchasing the property at the sale can obtain better title than is usual at judicial sale because the redemption period (the time during which the taxpayer may retrieve his property by paying taxes and costs) has been reduced to 60 days; and
(4) The city may release its tax lien if it has entered into a land bank authority, as provided by KRS 65.350-65.375.

The streamlined tax foreclosure method was declared constitutional except for a notice provision of KRS 91.4884. The objectionable language was deleted by the 1986 General Assembly.[56]

Additional Tax Law. Additional provisions relating to taxing powers of cities of the first class can be found in KRS Chapters 65, 91A, 92, 132, 136, 137, 186 and 210.

Cities Other than the First Class

Fiscal year. The fiscal year of all cities shall be from July 1 to June 30.

Types of Taxes Permitted. Cities of all classes are authorized to levy and collect all taxes authorized by Section 181 of the Kentucky constitution. However, a city of the sixth class is prohibited from levying an occupational license fee at a percentage rate (KRS 92.281). The following discusses what taxes are authorized by that provision of the constitution.

Section 181 permits the levy of four types of taxes and license fees:

(1) License fees on stock used for breeding purposes;
(2) License fees on trades, occupations, and professions;
(3) Taxes for municipal purposes on personal property, tangible or intangible, based on income, licenses or franchises, in lieu of ad valorem taxes thereon, although cities of the first class are prohibited from omitting the imposition of an ad valorem tax on such property of any utility; and
(4) Ad valorem taxes.

The first and last type of tax need no explanations. The second and third taxes have raised many questions with regard to whether they permit cities to levy income taxes. The language authorizing the license fee on trades, occupations and professions reads in relevant part: "The General Assembly may delegate the power to cities and other municipal corporations, to impose and collect license fees on franchises, trades, occupations and professions." In the same section, immediately preceding the above quoted language is the provision setting out what taxes may be levied by the state. The language is substantially identical to that used for local governments except that the state language refers to "excise tax," while the local government language does

not. Consequently, section 181 has consistently been construed to prohibit the levy of excise taxes by local governments.[57]

There are three basic types of taxes: property taxes, poll taxes and excise taxes. An excise tax is a catch-all tax, in that any levy which does not fit into one of the first two categories is considered to be one. More specifically, the tax has been defined to include "every form of taxation which is not a burden laid directly upon persons or property; in other words, excise includes every form of charge imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in of an occupation."[58] An income tax, as can be seen from the above definition, is a classic form of excise tax and has consistently been determined to be such by Kentucky courts. "An income tax is not a tax on property, but partakes of the nature of an excise."[59] Nevertheless, Kentucky courts have consistently construed Section 181 as permitting a type of income tax. This has been accomplished by saying that the tax, while it may appear to be an income tax, in that it is measured by the taxpayer's income, is in fact not an income tax at all but an "occupational license fee."

The above reasoning was first approved by the Kentucky Court of Appeals (now Supreme Court) in 1948 in the case of *City of Louisville v. Sebree*,[60] which arose out of a controversy involving the imposition by the City of Louisville of a tax on "all salaries, wages, commissions and other compensations earned by every person in the city for work done or services performed or rendered in the city." The taxpayer alleged that the tax was invalid because it was obviously an income tax, clearly prohibited by the Kentucky Constitution. The City of Louisville agreed that indeed income taxes are impermissible, but that the tax in question was not an income tax, but a license fee on trades, occupations and professions, which was clearly authorized by Section 181. The taxpayer countered that no matter what the city chose to call its tax it was clearly an income tax since the amount imposed was set as a percentage of the income earned by the taxpayer. The court settled the argument by siding with the city. It agreed with the taxpayer that the tax did share a great many similarities with an income tax, especially since the imposing ordinance had been closely modeled after a Philadelphia ordinance which had been construed by Pennsylvania courts to be an income tax. The distinction was that the Philadelphia tax and income taxes in general represent the "imposition...of a withholding tax directly upon earnings or income derived from labor, services or business," while the Louisville tax was "upon the privilege of working and conducting a business within the city and only measures the value of the privilege by the amount of earnings for net profits."[61] The court agreed that the use of a percentage tax made the tax look suspiciously like an income tax, but felt such an approach was placing too much emphasis on the basis of computation of the tax rather than the subject of the tax. After all, the courts stated, "if graduated stated sums had been provided instead of a per centum of receipts or net profits, the source of such sums would in all probability have been the same. And that way of fixing the tax could scarcely be regarded as illegal."[62]

Since *Sebree*, the Kentucky Supreme Court has steadfastly adhered to the position that a local tax on wages and profits is not an income tax, but is an occupational license fee. Recent courts have shown a certain amount of queasiness concerning the decision and have not attempted to expand the doctrine. The attitude of the court is reflected in the language used in two recent cases upholding an "occupational license fee." "While it is true that the amount of the license fee each individual must pay is measured by the income earned by those taxpayers, and therefore the tax has some of the attributes of an income tax, the question is no longer an open one."[63] "The genius of the times will not permit this court to do other than to affirm the holdings in those cases."[64]

The reasoning behind the *Sebree* line of cases was skewered in a dissent by Justice Osborn to the decision in *Motel Devel.* (supra), however: "where a tax has all of the attributes of either a sales tax or an income tax and no real earmarks of the ancient license tax, it cannot reasonably be called a license tax. To do so only confuses the law and confounds those who must operate under it."[65] However, Judge Osborn recognized the realities of the situation and put his finger on the reason the *Sebree* case was so unquestionable. "Based upon the decision many other cities have adopted either highly similar or identical taxes. For us to recant at this time and declare that type ordinance invalid would be to invalidate practically all occupational license taxes in this Commonwealth. I do not believe this is a course that is practical nor would it demonstrate the degree of wisdom that the people have a right to expect from their judicial officials. The die is now cast...."[66]

For practical purposes, the court has acquiesced in the legal fiction that the tax is a fee imposed on the privilege of employment which just happens to be measured by income, albeit with some misgiving. The question is: how much will it take to push the court over the edge? Analysis of the cases shows that the court is teetering on the brink and that any features added to the occupational license fee increasing its resemblance to an income tax would result in the invalidation of the tax. The line of *Sebree* cases shows that for a tax on income to be valid it must be:

(1) Styled an occupational license fee;
(2) Considered to be a fee for the privilege of being employed within the city;
(3) Applied equally and uniformly upon taxpayers, unless there is a reasonable basis for discrimination.

The Supreme Court struck down an occupational license imposed by the City of Erlanger upon mobile home parks.[67] The levy imposed a fee for each trailer parking space within a park. The court stated that a license fee for revenue purposes may be calculated by only three methods: "a uniform tax upon all persons engaged in the same business regardless of volume of business, a uniform tax upon volume of business, or a tax upon separate classes in a general class based upon the volume of business."[68] The court struck down the Erlanger ordinance because the method of computing the tax "is not reasonably related to the volume of business..." of the taxpayer, since the number of spaces available for rent does not actually reflect the amount of business done by the taxpayer.[69]

The City of Erlanger also tried to justify the tax by saying that it was not a revenue measure, but a regulatory measure imposed pursuant to the city's police powers. The court held that the ordinance would not be valid as a regulatory measure because it made no attempt to regulate and even assuming it did, the fee imposed was excessive because "a license tax imposed under police powers also must be sufficient only to meet the city's expenses of issuing the license and exercising supervisory regulation over the subject matter of the tax."[70]

The court went on to state the general rule for regulatory license fees: "The imposition of city license taxes to cover general operating costs in excess of the ad valorem revenues must be based upon a fair apportionment of the cost of city services according to an objective standard reasonably related to the cost incurred."[71]

Of course, in many ways, the *Sebree* occupational license fee is not a true income tax. The two main deficiencies are that (1) it can only be imposed upon persons working within the city and cannot be imposed upon persons living in the city but working without, and (2) because it must be imposed uniformly, it cannot be used for various social purposes, as is usually the case with income taxes.

The provision of Section 181 authorizing the third type of tax reads as follows: "And the General Assembly may...authorize cities...to provide for taxation for municipal purposes on personal property, tangible and intangible, based on income, licenses or franchises in lieu of an ad valorem tax thereon." This provision was added to the Constitution by an amendment adopted in 1902.

At first reading, this provision of Section 181 would seem to permit cities to levy an income tax in lieu of an ad valorem tax. Closer reading, however, shows that it does not permit a tax on income, but a tax on personal property measured by income. Basically what the provision permits is "substituting one method of assessment for another."[72] In other words, cities, as an alternative to levying a tax based upon the assessed value of personal property, may levy a personal property tax based upon the income produced by that property. "Municipal authorities are given the option to substitute for the ad valorem tax on personal property, a tax based on income, licenses or franchises."[73] The provision is obviously not applicable to the average taxpayer whose income is not generated by property owned by him, but, in the words of the dissenting judge in *Sebree*, from "just earning a living in the 'sweat of the face.'"[74]

All cities other than those of the first class are required annually to levy by ordinance an ad valorem tax on all real and personal property subject to taxation for city purposes. A city may impose a franchise fee on stock used for breeding purposes and on franchises, trades, occupations and professions (KRS 92.280).

No tax shall be imposed by any city except by ordinance. The ordinance shall specify the purpose for the tax and the revenue collected shall be expended for no other purpose. Failure to specify purpose shall render the levy invalid (KRS 92.330). Any city officer, employee or agent who authorizes or could have prevented the expenditure of tax revenue for other than the specified purpose shall be liable for the amount so expended. The city attorney shall bring suit; if he fails to do so within six months, any taxpayer may bring suit. Any indebtedness contracted in violation of KRS 92.330 shall be void (KRS 92.340).

Any city other than the first class may exempt manufacturing establishments from taxation for five years as an inducement to their locating within the city. In cities of the third class, a two-thirds majority of the legislative body is required to authorize such a tax abatement. No city shall impose any license tax on any financial institution or upon income earned by members of the Kentucky National Guard during training (KRS 92.300).

Any city may impose license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance. Such tax may be enacted or changed effective January 1 or July 1 and its application must be prospective from that date. The state Department of Insurance must be notified of any enactment or change at least 60 days prior to the effective date. If the tax is imposed upon policies of life insurance, it may be based upon the first year's premium or some other basis. If based upon the first year's premium, the tax shall be applied to the amount of such premiums actually collected each quarter. If the tax is imposed on any policy other than of life insurance, it shall be based upon the premiums actually collected within each calendar quarter. Premiums on workers' compensation policies of employee accidental death or injury policies are exempt from taxation.

Insurance companies whose policies are taxed by the city shall remit such tax to the levying city within 30 days after the end of each calendar quarter. If the taxes are not paid by such date, the delinquent amount shall bear interest at the tax interest rate pursuant to KRS 131.010(6). A city may impose no other penalties upon insurance companies. By March 31 of

each year, each insurance company shall furnish each city imposing insurance taxes a breakdown of all collections subject to tax for the preceding calendar year.

A city may request the department of insurance to audit any insurance company to determine if the tax is being properly collected and remitted (KRS 91A.080). Premiums paid on policies of group health insurance or employee benefit funds for state employees pursuant to KRS 18A.225(2) shall be exempt from taxation. Insurance companies shall credit city license fees to county license fees for such licenses for fees levied on or after July 13, 1990. (KRS 91A.080).

The council in any city of the third or fourth class which is located in a county containing a city of the first class that provides police, fire or garbage collection services to its residents may levy a supplemental tax in addition to ad valorem taxes. The tax shall not exceed the cost of the provided services and shall be apportioned in a reasonable manner. The ordinance levying the tax shall be given no less than two readings at two different meetings of the council. The tax is subject to recall by the voters of the city. (KRS 82.095)

Assessment of Real Property. Every city other than the first class must, by ordinance, provide for the annual assessment of all taxable real and personal property located in the city (KRS 92.280). All property located within the city which is subject to state ad valorem taxation is subject to taxation by the city, with certain specifically set out exceptions (KRS 132.200). A city may not impose an ad valorem tax upon financial institution deposits (KRS 132.030), retirement plans (KRS 132.043), credit union accounts (KRS 132.047), brokers' accounts receivables (KRS 132.050), goods held by non-residents within transshipment warehouses (KRS 132.095), or inventories of licensed motor vehicle dealers (KRS 132.028). Also a city may not impose a license fee upon pari-mutuel wagering at racetracks (KRS 137.190), the rolling stock of prescribed common carriers (KRS 136.120), gasoline (KRS 138.220), fraternal benefit society funds (KRS 132.210) or special fuels (KRS 138.565).

A city may choose either of two methods of assessing property. It may utilize the county assessment prepared by the county property valuation administrator (PVA), or it may establish an independent assessment office except that for ad valorem taxes on motor vehicles, the PVA assessment must be used. If the city elects to use the PVA assessment it shall annually pay the PVA $0.005 per $100 assessed value of taxable city property, in no event to be less than $250 nor more than $40,000 in a city having a total assessment of two billion dollars, nor more than $50,000 if greater than two billion dollars (KRS 132.285). 1996 legislation amended KRS 132.285 to require cities that use county assessments for ad valorem taxes in 1996 and subsequent years to pay the PVA the same amount as paid in 1995, or the amount the PVA would have otherwise received, whichever is greater.

KRS 92.410 through 92.550 provide procedures for the assessment of property if the city elects to prepare its own assessments.

Collection. Except for taxes on motor vehicles and motor boats, cities may elect to use one of two methods for the collection of taxes. A city may contract with the county sheriff to collect taxes or it may establish its own tax collector. Taxes on motor vehicles and motor boats shall be collected by the county clerk who shall receive a 4% commission (KRS 134.800). KRS 134.815 authorizes the county clerk to deduct their commission from the monthly remittals to the city.

If a city elects to have its taxes collected by the county sheriff, it shall enact an ordinance and deliver a copy to the county clerk. The clerk shall then place the taxes due on the bills for county and state taxes (KRS 91A.070).

If the city elects to independently collect city taxes, it shall enact an ordinance specifying the "manner of billing, the place of payment, discounts, if any, for early payment, penalties and interests for late payment and other necessary procedures relating to ad valorem tax administration" (KRS 91A.070).

The statutes provide that such taxes are to be due and payable at the same time as county and state taxes (September 15), unless otherwise provided by law. Tax due dates for cities of the second, third and fourth classes, are as set out in Table 6 (KRS 92.590).

TABLE 6

TAX DATES IN CITIES OTHER THAN THE FIRST CLASS

Class	Date Taxes Due
2nd	"as determined by ordinance"
3rd	"as soon as they come into the hands of the tax collector,"
4th	July 1, city may elect option to permit installment payment, in which case, 1/2 due on July 1 next after the assessment date, the remaining 1/2 on December 1

KRS 92.590 also sets limits on the percentage of interest or penalties which may be added to delinquent tax bills in cities of the second, third and fourth class, as set out in Table 7.

TABLE 7

DISCOUNTS, PENALTIES AND INTEREST PERMITTED ON TAX BILLS IN CITIES OTHER THAN THE FIRST CLASS

Class	Discount	Penalty	Interest
2nd	3% if paid during 2nd month preceding due date; 2% if paid during month immediately preceding due date	10% if not paid within one month of due date	1/2% per month (6% per annum)
3rd	as set by ordinance 6% per annum		as set by ordinance
4th	6% pro rated from the date paid to the date they would have been due and payable	6%	6% per annum*

*Cities of the fourth class are permitted by KRS 92.590(6) to disregard the statutory scheme for discounts, penalties and interest and set a penalty by ordinance at a rate not to exceed 25%.[75]

Delinquent Taxes. If the city elects to have its taxes collected by the sheriff, he shall collect delinquent city taxes in the same manner he collects delinquent county and state taxes.

If the city elects to collect taxes independently, it may use any of three methods:

(1) it may enforce its lien on the property, subject to the tax, in the Circuit Court of the city. If the property value is insufficient it may also obtain a personal judgment against the taxpayer (KRS 91A.070);

(2) any city of the second through the sixth class may utilize the streamlined tax foreclosure method authorized for cities of the first class by KRS 91.481-91.527 (KRS 92.810); or

(3) a city may by interlocal agreement enter into a land bank authority to release the lien on the property. This allows the property to be sold, and possibly improved, so that it can be actively put back on the tax roles. The city would receive its prorated portion of back taxes from the sale of the property (KRS 65.350-65.375).

Other Taxation Provisions Relating to All Cities

Bank Franchise Tax. The bank franchise tax was enacted by the 1996 General Assembly to repeal KRS 136.270, the bank shares tax. This legislation establishes a local franchise tax on financial institutions, as measured by the deposits in the jurisdiction. This tax is in lieu of all local taxes except the real estate transfer tax, real property and tangible personal property tax, utility taxes, and the local franchise tax (KRS 136.505).

The franchise tax rate imposed by cities and counties cannot exceed 0.025% of the deposits. Each financial institution regularly engaged in business in Kentucky shall pay a minimum tax of $300 per year (KRS 136.510).[76]

Business Inventories Tax. Any city may levy a tax rate on business inventories equal to or less than the rate on other tangible personal property. The tax shall not be levied on the inventories of licensed motor vehicle dealers (KRS 132.028).

HB 44 Rate Limitation. A significant limitation on the ability of cities to raise revenue through ad valorem taxation is imposed by KRS 132.010 and 132.027. Prior to 1965, property in cities was usually assessed below its fair market value. In that year, the Kentucky Court of Appeals ruled, in *Russman v. Luckett*, that Section 172 of the Kentucky Constitution requires that property be valued for taxation purposes at a 100% assessment.[77] This decision threatened a great increase in property taxes, so the General Assembly enacted what was popularly known as the rollback law, to limit this potential tax windfall. The act limited cities to a "maximum tax rate", which, when applied to the new 100% assessments, would produce approximately the same amount of revenue as was produced under the pre-*Russman* assessments. Cities could annually recalculate the rate to take into account increases in the assessment base resulting from new construction, appreciation, and homestead exemptions.

Another amendment to the rollback law imposes further limits on cities. KRS 132.027, popularly known as House Bill 44, imposes a tax limit relating only to real property called "the compensating tax rate." The compensating tax rate is defined as that rate when applied to the current years assessment of property, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property [KRS 132.010(6)]. If the city intends to levy a tax in excess of the compensating tax rate, it must publish a notice of such intention and hold a public hearing thereon. If the tax levied will produce revenue from real property in excess of 4% over what would be produced by the imposition of the compensating tax rate, the tax levy shall be subject to recall (KRS 132.027). If within 45 days of the passage of an ordinance enacting a tax subject to recall as discussed above, a petition signed by a number of city voters equal to 10% of those voting in the last presidential election is

received remonstrating against the tax, the question of the tax rate shall be placed on the ballot at the next regular election. If a majority of those voting are against the proposed rate increase, the rate shall be rolled back to one which will not produce more than a 4% revenue increase (KRS 132.017).

If as a result of the rollback election, the real property tax rate is reduced, the tax rate applicable to personal property shall be similarly reduced to a rate which will produce the same percentage increase in revenue from personal property as the percentage increase in revenue from real property (KRS 132.018).

Conversely the city may not levy a tax rate on personal property which will result in a percentage increase in revenues from personal property over the previous year's revenue in excess of the rate of change for real property revenues. (KRS 132.029).

Investment Partnerships. 02 HB 525 prohibits local occupational tax or license fees on investment partnerships if such partnerships are non-taxable if individually held (KRS 92.281 and 91.200).

Leased Property Tax. The leasehold interest in taxable real or personal property shall be subject to taxation at the prevailing state and local tax rates. Such past due taxes are a debt of the leasee and not a lien on the property (KRS 132.195).

Occupational License Fee Set-off. In counties with populations of more than 30,000 persons if a city has an occupational license fee and the county has imposed such a fee after July 15, 1986, taxpayers paying both taxes on the same income shall be allowed a credit against the county fee equal to the amount of the city fee [KRS 68.197(4)]. For all other cities and counties, persons may credit their city license fee against their county license fee only upon agreement between the city and county. [KRS 68.197(3)]

Property Assessment Moratorium. Any city may establish by ordinance a program to grant property tax assessment moratoriums to property owners as an inducement toward the repair, rehabilitation or restoration of real property at least 25 years of age. Property qualifying for the moratorium will have its assessment frozen at the pre-rehabilitation level for a period not to exceed five years. At the expiration of the moratorium the property will be reassessed at its fair market value. The frozen assessment shall be applicable only with regard to the taxes imposed by the governmental unit granting the moratorium (KRS 99.595 to 99.605).[78]

Railroad Property and Rolling Stock Tax. Local governments may tax the rolling stock of private car lines; a statutory multiplier exists for the taxation of railroad car line property (KRS 136.120).

Restaurant Tax. In addition to the transient room tax, any city of the fourth or fifth class which has established a tourist and convention commission may levy a special tax on gross sales of restaurants doing business within the city. The tax may not exceed three percent (KRS 91A.400).

Special Ad Valorem Tax. Any city is permitted to levy by ordinance a special ad valorem tax for specified programs, projects or services. Prior to the final adoption of the ordinance, the tax and the tax rate must be approved by the voters. If approved, the rate will be applied to all taxable property within the city and collected in the same manner as other city ad valorem taxes. The proceeds from this tax are to be accounted for separately and used only for the specified purpose of the tax. Such tax is in addition to any other taxing authority of a city and is not limited to the recall provisions of KRS 132.027(HB 44). (KRS 65.125).

TVA in-Lieu-of-Taxes Payments. The property of the Tennessee Valley Authority is not subject to state and local taxation. However, the TVA entered into an agreement with the state to

make annual payments to the state in lieu of such taxes. Seventy percent of such payments are to be paid to those counties, cities and school districts in which TVA facilities are located. The payments are apportioned among the local governments in accordance with a formula which takes into account the value of TVA property located in a jurisdiction and the current tax rate of the local government (KRS 96.895).

Transient Room Tax. A special tax may be levied by any city which has established a tourist and convention commission pursuant to KRS 91A.350 *et seq*. The tax is a surcharge levied on hotel and motel room rentals. The maximum rate which may be imposed by cities is three percent and urban-counties may levy a four percent rate, except as provided below (KRS 91A.390). In addition to the above tax, a city of the first class may also levy a one percent tax to be used exclusively for the benefit of the Kentucky Center for the Acts Corporation (KRS 153.440). An urban-county government may levy an additional one percent to be used exclusively for the benefit of the Lexington Center Corporation (KRS 153.450). All cities which impose the three percent (3%) tax may impose an additional tax, not to exceed one and one-half percent (1 1/2%), for the purpose of operating a convention center (KRS 91A.390).

KRS 91A.392 permits a fiscal court in counties containing a city of the first class to issue an additional transient room tax, not to exceed 2% of the rent for every occupancy of a suite, room, or rooms charged by all persons, companies, corporations or groups doing business as motels, hotels, inns or similar businesses, for the retirement of bonds issued to expand government-owned convention facilities located in the central business district of cities of the first class in these counties, and requires the repeal of the tax upon retirement of the bonds (KRS 91A).

Variable Tax Rate. Any city may provide for reasonable differences in the rate of ad valorem taxation within different areas of the city. The difference must be reasonable and must relate directly to differences between non-revenue producing services and benefits which are available in some areas but not in others. Rate differentials only apply to real property (KRS 82.085).[79]

Indebtedness

Debt is divided into two broad categories: long-term and short-term. Short-term debt is debt which has a maturity of one year or less from the date of issuance. Short-term debt includes, floating debt, bond anticipation notes, and tax anticipation notes. Long-term debt is debt with a maturity of more than one year from the date of issuance. Long-term debt is usually evidenced by a legal instrument called a bond. In addition to bonds, cities may also incur a long-term obligation through leasing transactions.

Short-term Debt

Short-term Financing . Cities may obtain short-term financing in anticipating of taxes on revenues which are payable by appropriation. Such action is to be with "renewal secured notes," which must be repaid by the end of the fiscal year. The notes may be sold to other financial institutions (KRS 65.7701-.7721).

Prompt Payments. All local governments are required to pay vendors within thirty (30) days of receipt of an invoice. If unpaid, a penalty of one percent (1%) per month may be assessed by the vendor. Payment contracts agreed to by the purchaser and vendor are exempt from such penalty (KRS 65.140).

Long-term Debt

Long-term debt takes two basic forms: revenue bonds or general obligation bonds. Revenue bonds are bonds which are to be repaid solely from the revenue generated by the project for which they were issued. General obligation bonds are bonds which are supported by the full faith and credit of the issuing city. The interest on both types is tax free, although revenue bonds are subject to various federal and state rules which limit their tax-free nature.

General Obligation Bonds. Any city may issue bonds to refund existing valid floating debt or to refund valid outstanding bonds. If new bonds are issued to refund a debt, the maturity schedule of the new bonds may extend beyond the remaining life of the original bonds when the original bonds were issued by a city, urban-county, or an agency or instrumentality thereof (KRS 58.100). At the time of issuance of the bonds, the city shall levy an ad valorem tax sufficient to pay interest on the bonds, and create a sinking fund for payment of the bonds within 40 years. HB 239, enacted in 1994, deleted the previous requirement that "floating debt" bonds be limited to not more than 6% annual interest and not sold for less than par and accrued interest, and applied the provisions of KRS 58.190 to these bonds, thus requiring that actions challenging the validity of these bonds must be brought within 30 days of the effective date of the ordinance approving the bonds. This legislation also provided that the bonds or obligations may be issued by a city to refund certain floating indebtedness if the bonds or obligations bear interest at a lower rate per annum, mature no later than the original obligation, and are issued in an amount that is no more than the excess of general fund expenses over general fund revenues.

A municipality may not issue bonds unless it has first notified the state local debt officer. The officer shall also furnish technical advice to cities if requested (KRS 66.045).

Revenue Bonds. Unlike general obligation bonds, revenue bonds are not backed by the full faith and credit of the issuing city, but are secured only by the revenue generated by the project financed by the issuance of the bonds. The Kentucky Supreme Court has stated that "constitutional restrictions on municipal indebtedness are not applicable to obligations which are payable out of money derived from income and revenue of specific projects."[80] Therefore a city may borrow using revenue bonds without having the issue approved by the voters.

Revenue bond financing is authorized by the KRS for a number of specific projects. A city may also issue revenue bonds for additional projects pursuant to the broad home rule authority of KRS 82.082. Additionally, some projects may be financed by establishing a special district which issues bonds in its name instead of the city's. Table 8 lists the various projects a city may finance through the issuance of revenue bonds. Industrial revenue bonds are subject to additional rules and are discussed separately below. Table 7 does not include those revenue bonds which may be issued in the name of a special district.

The revenue to amortize revenue bonds may be generated by (1) user fees, (2) special assessment taxes, or (3) rents, depending upon the nature of the project financed. User fees are fees which are charged to consumers of a service for the use of such projects. Typically user fees will be the revenue source to pay off revenue bonds used to finance capital construction for public utilities, e.g., electric power plants, water works, or gas plants. User fees may also support such public facilities as parking garages or convention centers. Special assessment taxes are similar to user fees except that they are charges on the land of a user of a service. Special assessments are typically used in the extension of a service to users, such as sewers or sidewalks, which are of a permanent nature and which enhance the value of the property. The owners of the property are required to bear a proportionate share of the total cost of the improvement.

TABLE 8
STATUTORY AUTHORIZATIONS FOR REVENUE BONDS

Purpose	Authorized for which class	Citation
Public projects	All	58.020
Refunding bonds	All	58.100
Activities pursuant to interlocal cooperation act	All	65.270
Acquisition of scenic easements	All	65.440
Riverport facilities	All	65.600
Sanitary sewers	U-C	67A.883
Water facilities	All	74.470
Corporate purposes of metropolitan sewer district	1st, 2nd	76.150
Inducing location of federal or state projects	All	82.135
Promoting recreational, convention and tourist activity (Transient Room Tax)	All	91A.390
Electric and water systems	3rd	96.184
Electric and water systems	4th	96.195
Waterworks	1st	96.300
Acquisition of waterworks	2-6	96.370
Refunding bonds	2-6	96.470
Additional bonds	2-6	96.480
Improvement of waterworks	2-6	96.490
Electric light, heat and power plants	2-6	96.520
Natural gas distribution system	All	96.537
Artificial gas system	All	96.544
Electric power plants	All	96.650
Mass transit	All	96A.120
Recreational facilities	All	97.055
Acquisition of recreational facilities	All	97.150
Improvement of recreational facilities	All	97.230
Urban renewal and community development	All	99.400
Urban renewal and community development	All	99.490
Local development	1st, 2nd & U-C	99.670
Parking facilities	All	103.210
Acquisition of industrial facilities	All	103.210
Pollution control facilities	All	103.246
Acquisition of waterworks	2-6	106.050
Funding bonds	2-6	106.150
Additional bonds	2-6	106.160
Improvement of waterworks	2-6	106.170
Municipal improvements	All	107.015
Privatization of water or wastewater system	All	107.750
Solid waste management facilities	All	109.170
Industrial development	All	152.900
Interstate bridges	2nd	181.560
Bridges	1st	181.854
Airport facilities	All	183.136
Hospitals	2-5	216.100

Industrial Revenue Bonds. Revenue bonds used to finance commercial development are known as industrial revenue bonds. Industrial revenue bonds are used by local governments to induce businesses to locate within their boundaries. Typically a city will agree to construct a facility for a business, issuing revenue bonds to finance the construction. Upon the completion of the facility the city will lease the building to the business on a long-term lease agreement for an annual rent sufficient to amortize the bonds. What makes such financing plans attractive is the tax-free nature of municipal bonds. Since the bonds are tax-free, they may be issued at a lower interest rate than taxable bonds; the lower interest rate means the money borrowed costs less, so a business financing its capital construction with revenue bonds reduces its costs significantly over financing by conventional means. It should be noted that federal tax laws severely restrict the use of tax-free revenue bonds—now called "private activity bonds."

"Bonds" means bonds, notes, variable rate bonds, commercial paper bonds, bond anticipation notes, or other obligations for payment of money (KRS 103.200).

KRS 103.200-103.2451 authorizes cities and counties to issue revenue bonds for the construction of "industrial buildings," as defined and pollution control facilities. The definition of "industrial building" includes any facility suitable for:

(1) manufacturing, processing, assembling, storing, distributing or warehousing commercial products;
(2) airports, mass transit facilities, ship canals, ports, docks, wharf or harbor facilities, off-street parking facilities, railroads, monorails or tramways, railway or airline terminals, cable television or mass communication facilities;
(3) health care facilities;
(4) non-profit educational institutions;
(5) recreational or amusement parks;
(6) industry which processes raw agricultural products, including timber;
(7) site improvements incident to the development of an industrial site;
(8) furnishing water to the general public;
(9) extraction, production, grading, separating, washing, drying, preparing, sorting, loading and distribution of mineral resources;
(10) convention or trade show facilities;
(11) hotels or motels;
(12) any activity designed for the preservation of residential neighborhoods, provided such activity is approved by the Kentucky Heritage Commission and insures the preservation of at least 30 residential units;
(13) any activity designed for the preservation of commercial or residential buildings which are on the national register of historic places or located within an area designated as a national historic district or approved by the Kentucky Heritage Commission; and
(14) any activity, including new construction, designed for revitalization or redevelopment of downtown business districts, as designated by the city (KRS 103.200).

Facilities not suitable for industrial revenue bond financing are those designed for commercial enterprises providing financial services, office buildings, sales activities (wholesale or retail) or medical office buildings.

A city must obtain the approval of the state Private Activity Bond Allocation Committee before it may issue revenue bonds for certain projects. The projects subject to oversight are:

(1) hotels or motels;
(2) residential neighborhood preservation;
(3) restoration of historic properties;
(4) revitalization or redevelopment of downtown business districts;
(5) off-street parking facilities; and;
(6) cable television and mass communication facilities.

The committee's review of the proposed project is to determine that it meets all of the following criteria:

(1) there is an economic need for the project in the area;
(2) the project will not burden existing businesses with an unjustified competitive disadvantage;
(3) normal commercial financing is unavailable;
(4) the project is in accord with the intent of the law; and
(5) the project is economically sound (KRS 103.2101).

Upon selling the revenue bonds, a city is authorized by KRS 103.215 to use one of four financing methods to pay off the bonds. There are three parties in an industrial revenue bond transaction: the city, the purchaser of the bonds, and the private developer. The city issues the bonds in its name but the proceeds are passed through to the private developer to finance his facility. The four financing arrangements available between the city and the private developer are:

(1) The city may build the facility, hold the title to it and lease it to the developer;
(2) The city may make a loan of the bond proceeds to the developer to be used to acquire the facility;
(3) The city may build the facility and sell it outright to the developer; or
(4) The developer may acquire the facility and lease it to the city, which will then sublease it back to the developer (KRS 103.215).

In all arrangements, the payments made by the private developer, whether pursuant to a lease, note, or mortgage, are to be sufficient to amortize the industrial revenue bonds. The last three arrangements have an advantage over the first, more traditional arrangement of leasing the facility to the developer, in that the developer, not the city, holds title to the facility and the property is thus subject to city ad valorem taxes.

The bonds so issued shall bear interest at any rate or rates, either fixed or variable, in accordance with such method as may be set by the issuing body (KRS 103.220).

Anticipation Notes

Revenue Bond Anticipation Notes. A city may begin a project to be financed by revenue bonds with interim financing through the sale of revenue bond anticipation notes. The maturity of such notes may not exceed five years and they are payable only from the proceeds from the sale of revenue bonds (KRS 58.150).

Grant Anticipation Notes. Any city may sell grant anticipation notes for interim financing of a public project for which it is entitled, as a matter of law, to receipt of federal grants-in-aid. Such a note shall mature in no more than three years (KRS 58.155).

Sinking Funds

If a city incurs any general obligation debt, or in most cases any revenue bond debt, it must establish a sinking fund. (Ky. Const., Sec. 159). A sinking fund, now more commonly

called a debt service fund, is "a fund established to account for the accumulation of resources by, and the payment of, general long-term debt principal and interest."[81] The 1982 General Assembly repealed the KRS which had previously mandated the establishment of sinking funds as agencies of the city, managed by appointed boards or commissioners. Cities may continue to operate their sinking funds in that manner, but it is no longer necessary. A sinking fund may now be no more than an accounting entry.

Tax Increment Financing

A popular development tool which had previously been unavailable to Kentucky cities was authorized by the 1986 General Assembly for cities of the first and second class and urban-county governments. Tax increment financing (TIF) is a simple device which utilizes the extra tax dollars generated by new development to finance public improvements within the development area. An earlier statute authorizing TIF had been declared unconstitutional.[82]

No city had utilized the statutes in KRS Chapter 99 authorizing TIF, so the 2000 General Assembly repealed these statutes and enacted a pilot program using TIF for cities of the first class or consolidated local governments (KRS 65.490-65.499).

Tax increment financing may be used to provide public improvements within any development area. A "development area" is any such area as defined by KRS Chapter 65, a project area pursuant to KRS Chapter 99, or a public project as defined by KRS Chapter 58. To use TIF, the local government enters into a contract with the agency operating the development area. The contract shall specify that the local government will release to the agency a certain percentage of the new tax revenues generated by the development. Such monies must be used exclusively for public improvements within the development area. Tax revenues subject to release may be either ad valorem taxes or occupational license fees or both. No less than 50% of the new dollars shall be returned nor more than 95% if solely from one tax or the other, or 80% if revenue from both taxes is released. Because of the experimental nature of the program, it shall be for 25 years.

Lease Purchasing Agreements

All local governments must comply with uniform procedures for acquiring and constructing real and personal property for public use through lease purchase agreements. Local governments may determine the terms and conditions of their lease, except that maximum lease terms are set by statute. The state local finance officer must be notified if leases exceed $100,000. Leased property is exempt from state and local taxation in a similar manner to state and local bonds or notes (KRS 65.940-65.956).

Also, cities interested in entering into rent to purchase agreements should review the provisions of KRS Chapter 367.

Intergovernmental Revenue

In addition to revenue generated from internal sources, cities also derive a significant share of their revenues from intergovernmental transfers. Federal transfer payments were at one time the most significant, but this trend has been reversed with the elimination of the federal revenue sharing program and major cutbacks in other areas of domestic spending.

The state government is prohibited from providing any general moneys to local government comparable to federal revenue sharing, but does support a number of programs

which provide funds for specific activities. More important state-funded transfer programs are discussed below.

Coal Severance Tax Return

A portion of the state coal severance tax is returned to local governments through two programs. The Local Government Economic Assistance Fund consists of half of the tax collected on the sale of minerals exclusive of coal and a percentage of the moneys in the Local Government Economic Development Fund. Ten percent of each county's share is to be allocated to the cities within the county. The program is administered by the Department for Local Government. Grants from this fund are used to attract new industry to coal producing counties. This program is administered by the Kentucky Economic Development Finance Authority (KRS 42.450 *et seq*.).

Area Development Fund

The Area Development Fund provides grants to local governments for specific projects. The fund is apportioned among the 15 ADDs, which then make grants to local governments pursuant to an application process. Monies received from the fund may be used only for capital projects. The program is administered by the Department for Local Government and receives monies from state and federal funds (KRS 42.345 *et seq*.).

Municipal Road Aid

The municipal road aid program provides moneys to cities and counties to be used for the construction, reconstruction and maintenance of streets, sidewalks and other public ways. The program is funded through the motor fuels tax, a percentage of which is distributed to cities according to an allocation formula developed by the state administering agency, the Finance and Administration Cabinet (KRS 177.365-177.369).

Professional Incentive Pay Programs

The state operates two programs which provide compensation supplements to local government police officers and firefighters.

The Kentucky Law Enforcement Foundation Program Fund (KLEFPF) is funded by 1.5% surtax on casualty insurance premiums. The fund pays a $2,750 annual supplement to qualifying police officers in local police departments which participate in the program. To qualify, a city must enact a resolution agreeing to comply with the program. Individual officers receive the supplement upon completion of training and educational requirements. The program is administered by the Department of Criminal Justice Training (KRS 15.410 *et seq*.).

The Professional Firefighters Foundation Program Fund (PFFPF) is similar to KLEFPF and provides a $3,000 compensation supplement to qualifying firefighters in participating local fire departments. Firefighters must be paid a minimum of $8,000 to qualify. The program is administered by the Commission on Fire Protection Personnel Standards and Education (KRS 95A.200 *et seq.*).

Other State Aid and Assistance Programs

Infrastructure Funding Authority. The 1988 General Assembly created the Authority to establish two infrastructure funding programs for local governments. "Fund A" of the program consists of state and federal loan moneys for revolving loans for projects authorized under Section 212 of the Federal Clean Water Act. "Fund B" consists of moneys from a state bond issue for a state administered revolving loan program. Loans from both "funds" will offer interest rates which are considerably lower than current market rates. Applications for both programs are initially reviewed by the Department for Local Government, financially attested to by the Finance and Administration Cabinet, and receive final loan approval from the Kentucky Infrastructure Authority. The 1990 General Assembly created an additional infrastructure funding program known as "the Kentucky Environmental Revitalization Act" which operates as a matching grant program. (KRS Chapter 224A).

Kentucky Environmental Revitalization Act. The 1990 General Assembly enacted provisions creating a solid waste revolving fund and municipal solid waste grant program. The revolving fund is to be used solely to provide financial assistance to borrowers, for municipal solid waste projects consistent with the priorities listed in KRS 224.43-.610. Nineteen ninety-four legislation limits assistance to one allocation per funding cycle and requires a borrower's project to be included in, and consistent with, the area solid waste management plan (KRS Ch. 224A). The 2002 General Assembly enacted 02 HB 174, which creates an initiative to close inactive disposal facilities, abate litter, provide better education regarding collection, and dispose of solid waste properly. (See KRS 224.43-010-224.43-345)

Mainstreet Program. Administered by the Kentucky Heritage Council, this program provides matching grants to cities between 10,000 to 60,000 in population to be used to employ a manager for downtown revitalization programs.

Public Transportation Development Fund. This fund was authorized by the 1986 General Assembly, and is to be used for the promotion and development of mass transit services. The fund is administered by the Transportation Cabinet (KRS 96A.096-96A.200).

Records Assistance Program. Administered by the Public Records Division of the Department for Library and Archives, this program grants funds to local governments to be used for the maintenance and preservation of vital public records. Grants are awarded quarterly.

Renaissance Kentucky. The Renaissance Kentucky program began as a gubernatorial initiative created by executive order which sought to pull together resources for the revitalization of Kentucky's downtown areas. The program is available to any Kentucky city which applies and agrees to meet the program requirements. Participation by a qualifying city can bring tax incentives, state and federal funding, in-kind services, and technical support from various state and federal agencies and special interest groups such as the Kentucky League of Cities and Kentucky Housing Corporation. When a city enters the program, it is are initially ranked and placed in one of three levels (gold, silver, or bronze) of sufficiency. From that point on, the city, program administrators, and participating program support agencies work together to assist that city in advancing through the various levels of the program in order to attain or maintain the "gold" classification, which earns that community the highest level of available assistance. Cities are limited in the number of years they can remain in the program or remain at a particular level without improvement. The program is administered by the Kentucky Housing Corporation, which should be contacted for more information at 502-564-7630.

Legal Liability

Tort Liability

Cities, unlike counties and the state government, are generally held to be liable for tort acts committed by officers and employees of the city or otherwise caused by some action for which the city is responsible.

Governmental immunity for cities was abolished in 1964 by the Kentucky Court of Appeals (then Kentucky's highest court) in *Haney v. City of Lexington*: "so far as governmental responsibility is concerned, the rule is liability—the exception is immunity."[83] In subsequent cases the court seemed reluctant to hold cities liable for all torts and created ever-broadening exceptions to the "rule of liability." The expansion was accomplished on a case-by-case basis as the court experimented with various legal theories. The most common theory used became known as the "singled-out individual" doctrine. *City of Louisville v. Louisville Seed Co.*, set out the test for liability:

> Where the act affects all members of the general public alike, it would be unreasonable to apply to it the broad principles of tort liability. But when the city, by its dealings or activities, separates the individual from the general public and deals with him on an individual basis, as any other person might do, it then should be subjected to the same rules of tort liability as are generally applied between individuals.[84]

In March of 1985, the Supreme Court, in *Gas Services Co., Inc. v. City of London,* rejected the cases following *Haney*:

> *Haney* abolished municipal immunity "for ordinary torts." It retained immunity only for acts which could be classified as 'the exercise of legislative or judicial or quasi-legislative or quasi-judicial functions.' We are not called upon to abolish municipal immunity. That was done 18 years ago. We are called upon simply to test the courage of the convictions previously expressed by this court.[85]

The plurality opinion, written by Justice Liebson, strongly criticized the post-*Haney* opinions, calling the classifications used "arbitrary pigeonholes for conclusions arrived at intuitively."[86] He further complained that the decisions "have so circumscribed its [Haney's] language that we have regressed beyond its starting point."[87]

Justice Liebson returns to the principle set out in *Haney* because he feels that "the concept of liability for negligence expresses a universal duty owed by all to all." Therefore "with a municipal corporation as with all other legal entities, the question is not whether such a duty exists, but whether it has been violated and what are the consequences.[88]

The 1988 General Assembly enacted statutory language which codified and narrowed several principles relating to municipal liability. KRS 65.200 to 65.2006 provide limitations on the tort liability of local governments. Major elements of the statutes include:

(1) abolition of joint and several liability in suits against local governments;
(2) provision that local governments are not liable for injuries or losses resulting from:
    (a) claims covered by workers compensation;
    (b) claims connected with the assessment and collection of taxes;

(c) claims arising as result of the exercise of judicial, legislative, quasi-judicial or quasi-legislative authority, or the exercise of judgment or discretion, including, but not limited to:
    i. adoption or failure to adopt ordinances, resolutions, orders, etc.;
    ii. failure to enforce by law;
    iii. decisions relating to the issuance, denial, revocation, etc. of licenses;
    iv. exercise of discretion in deciding whether and how to utilize or apply existing resources; and
    v. failure to make inspections.

Local governments may pay large judgments on a periodic basis, and local governments must defend and indemnify their officers and employees against tort actions and judgments, as long as they are acting in good faith, within the scope of their employment and without fraud, malice or corruption. 1994 legislation specifies that a local government shall choose the attorney when it defends an employee in an action in tort, and the legislation relieves the government from paying a judgment if the employee obtains private counsel without the consent of the local government (KRS 65.2005).

In other parts of the so-called tort reform legislation the 1988 General Assembly changed the rules and requirements relating to punitive damages, evidence regarding collateral source payments, the statute of limitations for personal property damage suits, and the liability of directors and officers of profit and non-profit corporations.

The General Assembly also enacted a statute (KRS 96.533) limiting the liability of directors of municipal utility boards or commissions; and another (KRS 65.150) which allows an association of governmental units formed to provide insurance to participating members to borrow money and issue revenue bonds to fund the costs of providing the insurance.

In several other instances, the statutes limit a city's liability for particular acts. Generally these limitations take the form of special notice requirements. Thus a city will not be held liable for an injury caused by a defective public way unless notice is given to the city within 90 days of the injury (KRS 411.110); injury caused by excessive noise from airport operation unless notice is given within seven days of occurrence (KRS 411.115); or for injury caused by mob action or riot unless the city had notice of the impending disturbance and could have prevented the damage (KRS 411.100).

Federal Civil Rights Liability

A city is a "person" for purposes of 42 U.S.C. sec. 1983 and may be held liable for deprivation of a person's rights, privileges or immunities secured by the Constitution or federal laws. The deprivation must have been caused by an official policy or custom of the city.[89]

Antitrust Liability

The federal Sherman Antitrust Act makes illegal any activity which results in a monopoly or the restraint of trade or business.[90] State governments are immune from prosecution under the Act, but in a line of cases culminating in *Community Communications Co. v. City of Boulder*, the Supreme Court held that local governments, especially those operating under home rule statutes, could be sued under the Sherman Act.[91]

These rulings caused a near panic among city officials, since the cases promised to expose city officials to enormous liability for carrying out traditional municipal activities. Cities engage in a wide variety of activities which can potentially fall within the purview of the antitrust

laws. Such activities include granting of franchises or licenses, such as for cable television or utilities; land use planning; exclusive contracts; or any regulatory activity. Although even at the height of the scare few cities actually had judgments rendered against them the fear of an antitrust suit had a chilling affect on city officials across the country. Heretofore harmless acts promised now to involve the city in lengthy and expensive litigation. For instance, the simple granting of a cable television franchise could cause the companies which failed to get the franchise to bring an antitrust action against the city.

At the present time the crisis has abated because of federal legislation and several Supreme Court cases which have greatly limited a local government's exposure. The Local Government Antitrust Act of 1984 precludes the award of money damages against a local government in an antitrust action.[92] However, it does not foreclose other non-monetary relief.

The Supreme Court in two recent cases has greatly reduced the exposure of local governments to antitrust liability. In *Town of Hallie v. City of Eau Claire*, the court held that a city did not need explicit authorization from the state legislature to engage in anti-competitive activities.[93] Finally, in *Fisher v. City of Berkley* the court ruled that unilateral regulatory activities of a local government do not violate the Sherman Act, absent any showing that such activity is a concerted effort by more than one entity to limit competition.[94]

These cases, along with the Local Government Antitrust Act, protect local governments almost completely when engaged in normal regulatory and franchising activities.

However, it should be noted that when it finally appears that local governments have come out from under the shadow of the antitrust law, the Supreme Court has raised the specter of another crisis with respect to cable television franchising. In a rather vague 1986 decision, the court suggested that the granting of an exclusive CATV franchise could violate the first amendment rights of the losing bidders.[95] One commentary complained that the decision "means that cities are likely to face several more years of uncertainty and litigation.[96]

Americans with Disabilities Act

A city must comply with the provisions of KRS Chapter 344 regarding the employment of and treatment of persons with a disability (KRS Chapter 344).

CHAPTER VII

MUNICIPAL PERSONNEL

Home rule gives cities the power to function, revenue gives cities the funds to function, and the personnel of the city actually perform the functions. There are two categories of municipal personnel: officers and employees.

City Officers

A city officer is defined by KRS 83A.010(9) as a person who:

(1) holds an office created by the Constitution, state statute or city ordinance;
(2) possesses a delegation of a portion of the sovereign power of government;
(3) has power or duties which are granted directly or by implication by the city;
(4) performs his duties independently without the control of a superior power;
(5) has some permanency;
(6) is required to give an official oath;
(7) is assigned by a commission or other written authority; and
(8) gives an official bond if required.

The statutory definition is derived from a judicially formulated definition which was set out in *Lasher v. Commonwealth*:

> Under our decisions a requisite of a position's being a public 'office' is that it possess a delegation of a portion of sovereign power of government—authority to exercise some portion of the sovereign power—independent of any superior human authority other than a statutorily prescribed general control.[97]

The court further elaborated the definition by stating that the appellant, in this case a mail carrier, possessed no "portion of the sovereign power because he has no supervisory powers or duties; he has no decision-making powers in respect to procedures; he exercises no discretionary powers; he is bound by detailed rules."[98]

General Provisions Relative to Officers

A large body of statutes provides regulations for officers. Some statutes are applicable to all officers within the state, and others are applicable only to city officers. Generally the provisions are restatements of constitutional provisions (See Chapter II).

No public office shall be sold or let (KRS 61.010).

No person shall be disqualified from a public office having a residency requirement because of alterations in city or district boundaries (KRS 61.015).

All officers shall assume their office at the time prescribed by the constitution or by statute, upon taking the oath of office and executing any required bond (KRS 61.030).

The oath of office shall be taken on or before the day the elective term begins. Appointive officers shall take the oath within 30 days of receiving notice of appointment (KRS 62.010). The oath may be administered by a judge, notary public, clerk of a court or justice of the peace.

No officer required to execute bond shall take office until such bond has been given (KRS 62.050). The bond shall be a covenant running to the state from the principal and his surety

that the principal shall faithfully discharge his duties (KRS 62.060). An individual may not be a surety on more than one bond of any officer (KRS 62.065).

Any act permitted to be done by a ministerial officer may be delegated to a lawful deputy (KRS 61.035).

Conviction of bribery, forgery, perjury or any felony shall cause forfeiture of office. A pardon will not prevent forfeiture (KRS 61.040). Acts performed by an officer prior to conviction for any of the above offenses are valid (KRS 61.050).

No official statement made by an officer on a subject which he is required by law to make in writing shall be questioned except in a direct proceeding against the officer, or upon the allegation of fraud in the party benefited thereby or mistake on the part of the officer (KRS 61.060).

Conviction of an officer for dueling shall cause forfeiture of office and disqualification from holding any office (KRS 61.100).

Any public officer who is intoxicated while discharging the duties of his office may be fined not less than $100 nor more than $1,000 (KRS 61.180).

Any public officer who in any way profits from public funds may be convicted of a Class D felony and disqualified from holding any public office (KRS 61.190).

No officer or city employee shall be interested in any contract with the city or city agency, with the following exceptions:

- Contracts awarded before an elected officer filed as a candidate for office or was appointed;
- Contracts awarded after public notice and competitive bidding; and
- Contracts made pursuant to a specific finding by the governing body that the contract is in the best interests of the public (KRS Ch. 61).

Resignations shall be tendered to the officer required to fill the vacancy (KRS 63.010).

Any officer may be impeached by the Kentucky General Assembly. The action may be initiated by petition from any person or by the House of Representatives. The House of Representatives recommends impeachment and the impeachment is tried in the Senate (KRS 63.020-63.075).

If a vacancy in any office arises and no other provision for filling the office exists, the office shall be filled by appointment by the Governor (KRS 63.190). If a vacancy on the council cannot be filled by the council as required because all seats are vacant, the Governor shall appoint a number of members sufficient to constitute a quorum. Any vacancy in the office of mayor or the legislative body not filled within thirty days after it occurs shall be promptly filled by appointment by the Governor (KRS 83A.040).

The legislative body of each city shall, by ordinance, establish the compensation for any elective or appointive city office on a salaried or per diem basis (KRS 83A.070). The legislative body shall set the compensation of nonelected officers under a personnel and pay system (KRS 83A.070).

Incompatible Offices

Unless prohibited, a person may serve in two public offices simultaneously. Many offices, however, have been determined to be incompatible with certain other offices. If a person holding an office accepts an office which is deemed incompatible with the first office, the first office is automatically vacated (KRS 61.090). There is no prohibition against running for an office while holding an incompatible office (KRS 61.070).

KRS 61.080 sets out various incompatible offices which are summarized below. Additionally pertinent Attorney General opinions and court decisions are collected in the annotations to KRS 61.080.

No municipal officer may fill, simultaneously with his occupation of a city office, any of the following offices:

(1) State office, including member of the General Assembly;
(2) County office;
(3) Other municipal office.

Additionally, the following offices are deemed to be incompatible with any other public office:

(1) Member of Public Service Commission;
(2) Member of Workers' Compensation Board;
(3) Commissioner of fiscal court in counties containing cities of the first class;
(4) County indexer;
(5) Member of legislative body of cities of the first class;
(6) Mayor or member of legislative body of cities of the second class;
(7) Mayor or member of council in cities of the fourth class.

Appointed Officers

Offices may be elective or appointive. Elective officers were discussed in Chapter V.

How Established. The city legislative body shall establish by ordinance all appointive offices as needed. The establishing ordinance shall specify:

(1) The title of the office;
(2) The powers and duties of the office;
(3) An oath of office (required by KRS 83A.010); and
(4) The amount of bond required, if any.

The compensation for a nonelected office shall be established under the city's personnel and pay system (KRS 83A.070).

Except for a city clerk in cities of the second through the sixth class, no executive offices are required by the KRS. However, all appointive offices in existence on July 15, 1980, shall remain established until specifically abolished by ordinance. If an office is abolished, the abolition shall not be effective until the termination of the term of the current holder, if he was appointed for a definite term (KRS 83A.080).

Appointing Authority. The executive authority of the city shall appoint persons to fill the appointive offices established by the legislative authority. In mayor-council cities, the executive authority is the mayor; in commission or city manager plan cities the executive authority is the city legislative body. Except in cities of the first class, the executive authority's appointments are not effective until approved by the legislative body, but officers appointed by the executive authority may be removed at any time at the pleasure of the executive authority, without the approval of the legislative body, unless the tenure of the office is protected by statute or ordinance (KRS 83A.080).

City Clerk

Each city, except one of the first class, shall establish the office of city clerk. The office may be combined with any other non-elected office, but the title of the combined office must

contain the word "clerk." The ordinance establishing the office shall set out the powers of the clerk, which shall at a minimum include:

(1) Maintenance and safekeeping of permanent records of city;
(2) Performance of duties required of "official custodian" or "custodian" pursuant to KRS 61.870-61.882 (see Chapter III);
(3) Possession of the seal of the city; and
(4) Annual forwarding of prescribed municipal information to the Department of Local Government (KRS 83A.085).

City Administrative Officer

A city may establish the office of city administrative officer (CAO) (KRS 83A.090). The office of CAO is analogous to the office of city manager. The major difference is that the CAO is directly responsible to the executive authority instead of the legislative body, but it should be remembered that in commission and city manager plan cities, the legislative body is the executive authority.

As with other appointive offices, the city legislative body shall establish the qualifications, compensation and other matters as it sees fit. However, the statute requires that the CAO, at a minimum, be given the following duties; he shall

(1) advise the executive in the formation of policy;
(2) have major responsibility for the preparation and administration of the city budget, under the direction of the executive authority;
(3) advise the executive on personnel decisions; and
(4) have continuing direct relationships with city department heads.

In addition to performing duties established by the legislative body, the CAO shall carry out such other responsibilities as may be assigned to him by the executive authority.

Members of City Agencies or Boards

A city often establishes independent or semi-independent boards or agencies to perform a variety of functions which the city cannot or does not wish to perform through its regular departments. These units are usually administered by a body of persons appointed by the mayor or the city legislative body; they are usually considered officers. Statutes establishing or authorizing such units set out the membership of the governing body and who shall be the appointing authority. Table 9 lists such boards and agencies provided for by statute.

TABLE 9

BOARDS AND AGENCIES AUTHORIZED BY KRS

Name	Classes Authorized	How Established	Independent or Joint	Function	Number of Members	City Appointing Authority	Citation	Comments
Board of Adjustment	All	Per agreement under which zoning unit operates	Independent	To grant variances from zoning regulations	3, 5, or 7	Mayor*	100.217	May be more than one in planning unit.
Airboard*	All	Ordinance	Either	Operate airport facilities	6 or 10	Mayor**	183.127	10 member board cannot be established by city of 1st class.
Airboard	1st	Ordinance	Joint	Operate airport facilities	11(3)	Mayor*	183.127	
Air Pollution Control Board	1st & 2nd CLG	Joint resolution by city or county	Joint	Manage air pollution control district	7(4)	Mayor*	77.070	
Artificial Gas Commission	All	Ordinance	Independent	Operate artificial gas system	7	Not specified	96.545	Artificial gas system may also be under control of city officer or a waterworks or electric board.
Bridge Commission	1st	Ordinance	Independent	Operate and finance bridges	4+mayor	Mayor*	181.810	
Bridge Commission	2nd	Ordinance	Independent	Operate & finance bridges	4+mayor	Mayor*	181.570	Upon redemptions of bonds issued by comm. to finance bridge, comm. shall dissolve.
Civil Service Commission	1st	By KRS	Independent	Operate civil service system	6+mayor	Mayor	90.120	
Civil Service Commission	2nd-5th	Ordinance	Independent	Operate civil service personnel system	3-5	Mayor	90.310	
Board of Directors of Emergency Ambulance-Service District	All	Ordinance	Either	Manage affairs of ambulance district	3	Legislative body	108.110	If district consists of more than one city, largest city shall appoint 2 members and smaller cities 1 member each.
Board ofEqualization	2nd	KRS	Independent	Hear assessment appeals	3	Legislative body	92.240	
Board of Supervisors	3rd	KRS	Independent	Hear assessment appeals	3	Legislative body	92.250	
Board of Equalization	1st	KRS	Independent	Hear assessment appeals	3	Board of Aldermen	91.390	
Supervisors of Taxes	4th	KRS	Independent	Hear assessment appeals	3	Legislative Body	92.260	

Name	Classes Authorized	How Established	Independent or Joint	Function	Number of Members	City Appointing Authority	Citation	Comments
City/County Board of Health	1st CLG	KRS	Joint	Control all matters relating to public health	8+mayor+ county judge/ executive	Mayor*	212.380	
City/County Board of Health	2nd	Joint action by city and county	Joint	Control all matters relating to public health	9+mayor & CJ/E	None	212.640	Members appointed by secretary of Cabinet for Human Resources
Urban-County Board of Health	Urban-Co.	KRS	—	Control all matters relating to public health	7+mayor and a member of council	Mayor*	212.632	
Hospital Building Commission	1st	Ordinance	Independent	Supervise construction of hospitals, etc.	4+mayor	Mayor	98.050	
Housing Authority	All	Ordinance	Independent	Operate public housing projects	4+mayor	Mayor	80.030	
City/County Housing Authority	All	Resolutions by City & County	Joint	Operate public housing projects	8(4)	Mayor	65.262	
Riverport Authority	All	Ordinance	Either	Operate riverport industrial area	6	Mayor	65.262	If Authority is established as a joint agency, 3 members shall be appointed by mayor.
Commission on Human Rights	All	Ordinance	Either	Administer civil rights law	—	—	344.310	
Industrial Development Authority if Authority is established by com-	All	Ordinance	Either	Develop and operate industrial parks	6	Mayor	152.830	If Authority is city/country, three members shall be appointed by mayor; bination of cities, members shall be appointed jointly by all mayors.
Library Board of Trustees	1st	Ordinance	Independent	Operate library	12	Mayor	174.040	
City/County Library Board of Trustees	1st CLG	County enters into contract with city	Joint	Operate library	12(6)	Mayor	173..105	If city and county enter into compact under KRS 79.310, board shall be dissolved and library shall be operated as joint department. An advisory board may be established.
Library Board of Trustees	2-6	Ordinance	Independent	Operate library	5 (7 in cities of 2nd class)	Mayor*	173.340	May enter into contracts with other cities, in which case each city shall appoint equal number of members; total membership not to exceed 12.
Metropolitan Sewer District Board	1-2 CLG	Ordinance	Joint	Control sewer & drainage system	7(4)	Mayor*	76.030	

Name	Classes Authorized	How Established	Independent or Joint	Function	# of Members	Appointing Authority	Citation	Comments
Municipal College Board of Trustees	2	Ordinance	Independent	Operate municipal college	—	Mayor	165.160	
Parks, Playground and Recreation Board	All	Ordinance	Independent	Operate parks and recreational facilities	5	Mayor*	97.030	
Joint Playground & Recreation Board	All CLG	Ordinance	Joint	Operate parks and recreational facilities, zoos or museums	Not less than 5	Mayor**	97.035	If city of 1st class and county enter into compact pursuant to KRS 79.310, Board shall be dissolved and parks operation under joint department.
City Recreation Commission	All	Ordinance	Independent	Operate recreational project pursuant to KRS 97.100 *et.seq.*	3-7 [1-2 class] 3 [3-6 class]	Mayor*	97.110	
Board of Park Commissioners	2nd	Ordinance	Independent	Advisory board if city operates parks pursuant to KRS 97.405 *et. seq.*	5-7	Mayor	97.455	
Park Board	4th	Ordinance	Independent	Operate parks and playgrounds	Not more than 5	Elected by members	97.550	
War Memorial Commission	All	KRS	Independent	Operate war memorial established pursuant to 1922 Ky. Acts ch. 23	7	Elected by members	97.630	Commission is required if city constructed a war memorial.
War Memorial Commission	2-6	Ordinance	Independent	Operate war memorial established pursuant to 1922 Ky. Acts ch. 128	15	Mayor* (after initial appointments members shall be elected)	97.630	
Motor Vehicle Parking Authority	All	Ordinance	Either	Operate street and off-street parking facilities	5 [if indep.] 6(3) [if joint]	Mayor*	94.810	
Planning Commission	All	Ordinance	Either	Regulate land use	5-20(1/2)	Mayor*	100.133	
Planning Commission	Counties with pop. in excess of 300,000 CLG	KRS	Joint	Regulate land use	5+mayor & CJ/E(3)	Mayor	100.137	Only largest city appoints members.
Tourist and Convention Commission	1st CLG	Ordinance	Either	Promote tourism	9(3)	Mayor	91A.370	

Name	Classes Authorized	How Established	Independent or Joint	Function	Number of Members	Appointing Authority	Citation	Comments
Tourist and Convention Commission	2-6	Ordinance	Either	Promote Tourism	7	Mayor	91A.360	
Tourist and Convention Commission	Urban-Co.	Ordinance	—	Promote Tourism	9	Mayor	91A.372	
Transit Authority Board	All CLG	Ordinance	Either	Operate transportation systems	8 [if indep.] 8(4) [ifjoint & only 1 city] 8+1 member for each public body over two	Mayor	96A.040	If joint agency has more than two public bodies, membership appointments shall be determined by agreement.
Urban Renewal Community Development Agency	All	Ordinance	Independent	Promote development of a specified development area	5	Mayor*	99.350	
Development Authority	1, 2 & U-C	Resolution	Independent	Promote land development in a designated project area	7	Mayor*	99.625	
Electric & Water Plant Board	3rd	Ordinance	Independent	Operate combined water & electric system pursuant to KRS 96.171-96.188	5	Mayor*	96.172	
Board of Waterworks	1st CLG	Ordinance	Independent	Operate water system	4+mayor	Mayor*	96.240	If waterworks serves 50,000 customers outside city, CJ/E shall appoint two additional members.
Commissioners of Waterworks	2nd	Ordinance	Independent	Operate water system	3-6+ member of legislative body	Mayor*	96.320	Systems may be operated as department of city in lieu of establishing commission.
Waterworks Commission (or Waterworks & Sewerage Comm.)	3rd, in a co., with pop. in excess of 50,000	Ordinance	Independent	Operate waterworks or sewerage system pursuant to KRS 96.350	3-5+	Mayor	96.351	
City Utility Commission	2-6	Ordinance	Independent	Operate electric light, heat & power plant pursuant to KRS 96.520	5(2nd class) 3(3-6 Class)	—	96.530	
Electric Plant Board	All	Ordinance	Independent	Operate electric plant pursuant to KRS 96.520 *et. seq* (TVA Act)	4	Mayor*	96.740	

*Mayor's appointments subject to approval by legislative body.
**Mayor and county judge/executive appoint members jointly.

City Employees

The common law distinction between "officer" and "employee" is ambiguous. Consequently, a position may contain characteristics of both an office and employment. Under the Code, however, the distinction is clearer. An office is a position created by ordinance and designated as an office pursuant to KRS 83A.080; all other positions are employees. It is possible for all positions in a city to be employees, although it is not possible for all positions to be offices, since an office must possess the characteristics enumerated in KRS 83A.080. Other than status the only functional difference between classifying a position as an employment or an office is that in mayor-council plan cities, the appointment of officers is subject to approval by the city council.

In mayor-council plan cities, employees are appointed and removed at the sole discretion of the mayor, unless they are employees of the council or their terms of employment are protected by KRS, ordinance or contract (KRS 83A.130). For employment purposes, police officers are employees. In city manager and commission plan cities, employees are appointed and removed by the legislative body, although in city manager cities the manager may make temporary appointments (KRS 83A.140 and 83A.150).

With the exception of employees whose terms of employment are explicitly protected by statute, ordinance or contract (i.e., civil service rules, employee bills of rights, or appointments for definite term), employees of a city are said to be terminable at will. In the words of the Supreme Court, "...ordinarily an employer may discharge his at-will employees for good cause, for no-cause or for a cause that some might view as morally indefensible."[99]

Notwithstanding the employment at-will doctrine, a discharged employee may be able to maintain a wrongful discharge action against an employer if he can show that his discharge was in violation of public policy. Such an action is a tort action instead of a contract action. The public policy exception is narrow, the policy that allegedly was contravened by a dismissal must be clearly defined by statutory or constitutional law, and such law must be directed at providing protection to the employee in his job. In *Grzyb v. Evan*, the Kentucky Supreme Court cited with approval a Michigan case which stated that there are only two situations where a discharge will be so contrary to public policy that it constitutes grounds for a wrongful discharge action: (1) where the reason for discharge was the employee's refusal to violate a law, or (2) where the reason for discharge was the employee's exercise of a right conferred by law.[100] Examples of such public policy violations include *Firestone*, where the employee had been discharged because he filed a claim for workers' compensation, and *Pari-Mutual Clerks Union v. Ky. Jockey Club*, where the employee was discharged because he authorized a labor union to represent him during collective bargaining.[101] Finally, the court in *Grzyb* stated that a wrongful discharge action will not lie where the statute complained of being violated prescribes its own remedies for violation (in that case, sex discrimination, pursuant to KRS Chapter 344).

Where the KRS provide protections for the employee, such protections may grant the employee a vested interest or property interest in the employment. If such a property interest does arise, the employee may not be discharged without satisfying the due process requirements of the 14th Amendment or the Civil Rights Act, 42 U.S.C. Sec. 2000 (see Chapter VI). Basically, due process requires that the employee be afforded a hearing prior to termination. Failure to provide a pre-termination hearing for an employee with a property interest in his or her job could constitute a violation of that person's civil rights.

Personnel Pay and Classification Plan

The compensation of all city employees must be fixed by the legislative body, "in accordance with a personnel pay and classification plan which shall be adopted by ordinance" (KRS 83A.070). A personnel pay and classification plan is actually two documents: a position classification plan and a pay plan. The purpose behind the requirement for such plans is to insure the equitable treatment of city employees, to insure, for example, that all employees are paid equitably according to the nature of the work they perform, instead of upon non-job-related standards, such as who they know, or how generous their immediate supervisor is.

A position classification plan is a plan in which all city jobs are classified according to duties and responsibilities. The construction of the plan may vary, but the following describes the creation of a typical plan.

First, each existing city job is inventoried and evaluated on the basis of the work performed, its difficulty, the skills required and so on. Second, jobs are grouped under single titles,

> when sufficiently similar in kind of work and difficulty and responsibility of work that the same title can describe them and the same selection standards and processes can fill them, and the same salary range can be applied to them with equity. The title by which the group of these similar positions is known as 'class of positions.' A class may consist of many positions or, if the duties are unique, only one position.[102]

Third, after positions have been classified, written specifications are prepared for each class, which will define the "contents and limits of the class."[103] The actual contents of job specifications vary, depending on the needs of the city, but to fulfill its purpose, a specification should contain:

(1) "The title, which is a brief designation identifying the nature of work clearly and separating the class from other classes";
(2) "a definition of the kind or nature of work function found in the class";
(3) distinguishing characteristics of the class; and
(4) "brief examples of individual tasks or groups of tasks performed within the class."[104]

Fourth, existing employees are allocated to the classes. Typically a personnel classification plan will only cover the regular employees of the city and not elective officers, positions filled by contract, or members of appointive boards and commissions.

Once the classification of positions has been completed, the pay plan may be prepared. The classification plan is a necessary prerequisite to the pay plan because "a sound pay plan provides equal pay for equal work and the same pay for comparable jobs...[and to achieve] these objectives require a large body of job information that can best be obtained from a classification plan."[105]

The term "pay plan" applies to a system of compensating employees where pay levels have been established:

(1) in a systematic way;
(2) with proper attention to the prevailing levels of pay in the community;
(3) with proper regard for the relative worth of the various kinds of positions;

(4) on the basis of accurate, current information as to the kind and levels of work performed by each employee; and
(5) in a manner that provides consistent and fair treatment of all employees free from favoritism, partiality, or discrimination for improper reasons.[106]

The basic unit of a pay schedule is the "pay range." A pay range is established for each job classification, based upon a determination of the minimum and maximum rates of compensation warranted by that class. A range could consist of a single rate, but typically there is a spread between high and low to allow for increments to an employee's salary. Once the range is established for a class, a person employed in the particular classification may only be paid within the limits of the range, thus insuring that employees will receive equal pay for equal work, but allowing for differentials based upon job-related factors. Typically, the range will be divided into "steps," allowing for a uniform progression through the range.

A pay schedule, then, is composed of several of the ranges. A typical pay schedule "usually has the format of a table of numbers in which each horizontal line comprises a pay range and the vertical columns show the successive pay raises in each of the pay ranges."[107] A very simple pay schedule is reproduced in Figure 10. In this example, the steps are in 5% increments, which is fairly typical, and the rates are hourly, although they may be daily, weekly, biweekly, semimonthly, monthly or annually, whichever is most appropriate.

Figure 10

Sample Pay Schedule

Pay Range	**Hourly Rates**			
Number	**A**	**B**	**C**	**D**
1	$5.15	$5.41	$5.68	$5.96
2	5.68	5.96	6.26	6.58
3	6.26	6.58	6.90	7.25
4	6.90	7.25	7.61	7.99

The legislative body of the city shall adopt the personnel pay and classification plan by ordinance. It may be amended, of course, at any time by ordinance. The plan serves as a significant check on the executive's unilateral appointment powers over employees, because he must at all times adhere to the terms of the plan, with regard to the qualifications and number of positions filled and the compensation paid.[108]

Administration of Employees

The responsibility for administration and supervision of employees is dependent upon what organizational plan a city is operating under.

Mayor-Council Plan. The mayor is to supervise the conduct of all city departments and the conduct of all city employees. The mayor is to promulgate procedures to "insure orderly

administration of the functions of city government," subject to the disapproval of the council (KRS 83A.130).

Commission Plan. Since there is no separation of legislative and executive functions in the commission plan, the city commission has the sole authority for the administration of city employees. KRS 83A.140 requires that the commission supervise all city departments and the conduct of all city employees. The commission shall create the city departments and prescribe their functions and the duties and responsibilities of the department heads and their employees. The individual members of the commission shall each be assigned departments over which they will have direct supervision, although such supervision may be delegated to a CAO created pursuant to KRS 83A.090. The commission shall also promulgate procedures to insure the orderly administration of the functions of city government. The commission is charged with fixing the compensation of city employees pursuant to a personnel pay and classification plan.

City Manager Plan. Like the commission plan, the city manager plan vests all executive and legislative powers in the legislative body, the board of commissioners. The distinction, however, is that significant administrative powers are vested in the city manager. The manager's powers usually take the form of recommending certain actions to the board.

The city manager is responsible for the supervision of all departments of city government and the conduct of city employees. The manager shall promulgate procedures for the orderly administration of the functions of the city, although such procedures are only effective if approved by the board.

The board is the appointing authority for all city employees, although it is to act on the recommendations of the manager. Employees may be removed only when "necessary for the good of the service." The manager may make temporary appointments without the board's action, pending the making of the permanent appointment by the board, although such power is subject to "such conditions as may be imposed by the board" (KRS 83A.150).

Civil Service Plans

Civil service laws impose restrictions on the appointing authority's power to make personnel decisions. Civil service systems grew out of early twentieth century attempts to depoliticize the work forces of governments—especially local governments. Civil service systems "are designed to eradicate the system of appointment to public office for political considerations and to establish in its place a merit system of fitness and efficiency as the basis of appointment and to this end, the appointee is given tenure during good behavior."[109]

The primary device of a civil service system is the requirement that employees be appointed by merit, as determined by a system of competitive examinations. Typically a system will require that all applicants for a position take a test, usually administered by a board established for civil service purposes. The names of a certain number of those making the highest scores are then given to the appointing authority, who must pick from those names to fill the vacancy. After an initial probationary period, the person appointed is then removable only for cause.

Civil service systems are optional for all Kentucky's cities except those of the first class. There is a separate system for cities of the first class, and another system for cities of the second and third class, which may also be adopted by cities of the fourth and fifth classes.

Cities of the First Class. KRS 90.110—90.230 mandates that a city of the first class have a civil service system, called "classified service." The service shall cover all offices and

places of employment within the departments of public safety, public health, and public welfare and the civil service, except for the following offices or positions of employment:

> the director of safety and the director of safety's staff, including, but not limited to, assistants and his private secretary, the chief of police and his private secretary, assistant chief of police, chief of detectives, chaplain for the police department, chief of firefighters and his private secretary, assistant chief of firefighters, chaplain for the fire department; superintendent and animal catchers, and caretakers, in the division of city pound; supervising inspector of weights and measures, and inspector of weights and measures, and deputy inspector, in the division of weights and measures; the director of health and his private secretary, the director of welfare and his private secretary; and other specified janitors, cleaners, laundresses, night watchmen, truck drivers, kitchen helpers, janitresses, park laborers, bona fide university students, waitresses, housemaids, hospital resident medical staff, university visiting staff and visiting nurses in the various departments; and members of the civil service board and the personnel director (KRS 90.150).

The classified service shall be administered by a civil service board composed of six members appointed by the mayor and the mayor, serving as an ex-officio member. The board shall promulgate rules and regulations for the "appointment, transfer, laying-off, reinstatement, deductions from pay, leave of absence, promotion, demotion, dismissal and suspension" of all employees within the classified service (KRS 90.160).

All positions in the classified service shall be filled by competitive examination. Eligibility lists shall rank applicants according to their scores, except that some applicants are eligible for bonus credit on civil service exams if they have served in the armed services or as medical personnel during wartime as provided by KRS 90.320. Positions shall be filled by an appointing authority's choosing from among the names of the three highest scoring applicants. Any employee under the classified service who is dismissed, suspended or demoted may demand a hearing before the board, which will then rule on the appropriateness of the action.

The board of aldermen may, at its discretion, expand the classified service to include other departments, boards or agencies of the city.

Cities of the Second and Third Class. The civil service system for cities of the second and third class set out in KRS 90.300-90.420 is optional. The legislative body may adopt such a system and determine which departments and employees shall be included thereunder. The service shall be administered by a civil service board composed of three members appointed by the mayor with the approval of the legislative body. The system is substantially the same as that of the system required for cities of the first class.

Prior to 1982, administrative or directorial positions were excluded from civil service, but pursuant to a 1982 amendment to KRS 90.300, the city legislative body was given the option to define persons in such positions as "employees," therefore covered by civil service. Their election must have been before December 31, 1982.

Cities of the Fourth and Fifth Class. The legislative body of a city of the fourth or fifth class may elect to operate a civil service system pursuant to either the provisions of KRS 95.762-95.765 or KRS 90.300-90.420, to cover police and fire departments (KRS 95.761).

Residency Requirements

02 SB 141 prohibits the adoption of residency requirements for police officers and non-police employees in a law enforcement agency (KRS Chapter 61). This legislation also prohibits a local government from requiring such personnel to be registered voters but permits the local government to establish policies requiring reasonable response time for emergencies. Local governments are prohibited from enacting residency requirements for EMS personnel or volunteers, but policies may be established which require sufficient response time for employees off duty but on call (KRS Chapter 311A and KRS 61.409).

Equal Employment Opportunity Laws

Local governments are subject to the provisions of Title VII of the Civil Rights Act of 1964, as well as the Kentucky Civil Rights Act.[110] Basically, these laws prohibit them from discriminating against any individual with regard to his or her compensation, terms, conditions or privileges of employment because of such individual's disability, race, color, religion, sex, national origin or age between 40 and 70.

Additionally KRS 337.423 prohibits any employer from discriminating between employees on the basis of sex, by paying wages to any employee in any job at a rate less than the rate at which he pays any employee of the opposite sex for comparable work or jobs which have comparable requirements.

Other Employment Laws

Cities may be required to reimburse training costs to the state training unit if the city hires a county deputy sheriff who is under an employment contract prior to the expiration of the contract.

Wage and Hour Laws

Cities are subject to state and federal laws which set out minimum levels of compensation for employees and which regulate many other aspects of employer-employee relations. Until 1985 municipal employees performing "traditional" functions were not subject to the federal Fair Labor Standards Act (FLSA),[111] but in that year the Supreme Court ruled in *Garcia v. San Antonio Metropolitan Transit Authority* that all municipal employees are covered by FLSA.[112]

That decision has had little effect upon Kentucky cities because they were already subject to the provisions of the Kentucky wage and hour law (KRS Chapter 337), which closely tracks the federal law. The major difference between the two laws was removed when the 1986 General Assembly increased the state minimum wage to equal the federal wage.

There are three major provisions of the Kentucky wage and hour law.

(1) With limited exceptions, all employees must receive a wage of not less than $4.25 per hour;
(2) With limited exceptions, any employee who works more than 40 hours in a week must be compensated at a rate 1 1/2 times his regular rate for those hours. 1994 legislation (HB 719) amended KRS 337.540 to permit ten hours of work per day, rather than eight, as a legal day's work; and
(3) Employers must maintain detailed compensation records for every employee.

Kentucky law and the FLSA differ slightly on exceptions and in the determination of overtime. Where differences between the laws exist, state law prevails when more restrictive.[113] For further detail see KRS Chapters 336-344.

Pension Systems

HB 398, passed by the 1988 General Assembly, brought a fundamental change in pension administration for cities. Prior to the Act, cities of the second through the fifth class could maintain locally administered pension plans for their non-uniformed employees, or they could place them in the state administered County Employees Retirement System (CERS). Cities of the second class were required to maintain a locally administered retirement system for their police and firefighters. Cities of the third and fourth class could maintain a locally administered plan for their police and firefighters, or they could join the County Employees Retirement System. HB 398 required that all locally administered defined benefit retirement systems in cities of the second through fifth class are now closed to new members, with all new employees being granted membership in CERS. Employees on the payroll at the time of transition were given the option to stay with the local system or to transfer to CERS. Most employees chose to transfer. For example, among police and firefighters in cities of the second through the fourth class, only 167 chose to remain in the locally administered plan.[114]

When employees joined the CERS, they received service credit in CERS equivalent in time to their service credit under the locally administered plan. Pension assets attributable to the transferring employees' contributions were transferred to CERS. Cities have the option of transferring city contributions attributable to the transferring employees, or of retaining these contributions for investment purposes, and paying debts incurred to CERS over a period of up to 30 years, at the option of the city (KRS 78.530)

02 HB 801 amended KRS 78.530 to require KRS to deny membership to any local government which does not have a state contract for its employees in the state health insurance group. It also amended KRS 78.540 to allow those who originally opted out of membership in CERS to again have the option to join and to purchase service time on a delayed payment plan.

Employees already retired from local pension plans were not transferred to CERS. Cities have the obligation of maintaining retirement funds for these retirees, and of assuring that the funds remain sufficient to pay retirement obligations until the death of the last recipient. Requirements for actuarial evaluations of locally administered retirement funds were not changed by HB 398. Cities must still have an evaluation performed every three years to ensure adequate funding, and a copy of the actuarial report must be sent to the Legislative Research Commission (KRS 65.156).

Cities of the first class and urban counties were not affected by HB 398. Prior to HB 398, however, non-uniformed employees and the police in Louisville, the only city of the first class, had already transferred to CERS. In the 1988 session, the General Assembly also passed SB 245, which gave the firefighters the option of transferring to CERS. That transfer was made after the July 1, 1988 effective date of the Act. With the adoption of a consolidated local government in 2000 in Louisville, city and county employees, except for the fire department, will be under one system. Only previous polices regarding pensions will remain in effect until changed by the new metro council (KRS Chapter 67C).

In Kentucky's only urban-county, Lexington-Fayette, new non-uniformed employees have been placed in CERS for years while the old locally administered plan has been closed to new members. Urban-county police and firefighters are still required by statute, however, to belong to a locally administered retirement system (KRS 67A.370).

The net effect of 1988 HB 398, 1988 SB 245 and voluntary or statutory transfers to CERS over a period of decades is that nearly all active city employees covered by a defined benefit

pension plan now belong to CERS, and the Lexington-Fayette Urban-County Government's Police and Firefighter Pension System is the only defined benefit pension administered by a local government which is open to new members. Cities may still establish pension plans which are money purchase or defined contribution plans or deferred compensation plans, and may administer them locally. An amendment in 1992 prohibits any city, county, special district, consolidated local government, or any agencies or instrumentalities thereof from creating or maintaining a defined benefit retirement system which by its nature can have an unfunded liability. Urban-counties are exempt from this prohibition (KRS 65.156).

The 1990 General Assembly continued the pension reform efforts by enacting various pieces of legislation which built upon the 1988 legislation. Now local government employees previously opting not to participate in CERS are permitted to enter the system. HB 738, enacted in 1994, permits an urban-county government to put its new police and firefighters in the CERS under hazardous duty coverage and permits current police and firefighters to transfer or to remain in the local plan. The urban-county government may rescind its order if not enough current employees transfer. This legislation also permits the urban-county government to transfer funds to CERS which are not needed to fund benefits for current members, retirees and their survivors in the local plan and allows up to thirty years to pay the cost of the transfer to CERS (KRS Ch. 67A). The local government is required to purchase current service credit but may determine the amount to purchase (KRS 78.530). Other 1990 changes include an increase in the annual CERS accrual rate from 2% to 2.5%, retirement without penalty for employees with 27 or more years of service (KRS 61.595), an increase in employee contributions from 4.25% to 5% of creditable compensation (KRS 78.610), the option for employees to participate in only one (1) state retirement system (KRS 61.545) and 30 year time periods for cities to pay unfunded liabilities (KRS 61.565) and to upgrade those systems required to go from non-hazardous to hazardous duty classifications. Cities are required to purchase service credit for former employees that did not take refunds, and are current CERS members with another employer. The city is only required to purchase "credit" for that amount of service time during which contributions were made (KRS 78.531). Also, cities with closed pension systems which were funded by special pension fund taxes may continue to levy such a tax to fund CERS contributions and may increase the tax in amounts sufficient to only cover actual CERS costs (KRS 78.530). For more information on local pensions systems see KRS Chapters 61, 65, 67A, 78, 79, 90 and 95.

Disability and Death Benefits

All pension plans discussed above provide disability benefits for employees permanently disabled by a work-related injury and provide death benefits for an employee who dies as a result of a work-related injury. In addition several statutes provide disability or death benefits to police officers or firefighters not otherwise covered by a pension plan.

Any city of the third or fourth class which does not have a pension system providing disability benefits for members of the police or fire departments may grant monthly compensation benefits to any member of such departments who is unable to work because of injuries sustained in the line of duty. Such payments cannot exceed a total of $5,000. The city may also pay up to $1,000 of the member's medical expenses (KRS 95.850).

The state Board of Victim Compensation may authorize the award of a lump-sum payment not to exceed $25,000 to the family of any city, county or urban-county police officer

who is killed in the line of duty or who is not otherwise eligible to receive death or disability benefits under a pension plan (KRS 346.155).

The family of any city, county or urban-county police officer whose death occurs as a direct result of an act in the line of duty shall receive a lump sum payment of $75,000 paid out of the State Treasury. Such benefit shall be in addition to any other benefit received. "Police officer" shall include auxiliary policy officers employed pursuant to KRS 95.445, as well as regular officers (KRS 61.315).

00 HB 519 created a new section of KRS Chapter 95 to provide a monthly payment of $200 each for life and health insurance for firefighters permanently and totally disabled in the line of duty.

The spouse or children of a firefighter or volunteer firefighter who was killed in the line of duty on October 1, 1989, or who is permanently or totally disabled while in active service or training, are entitled to free tuition at any state supported university, community college or vocational training institution (KRS 164.2841 and 164.2842).

Any participant in CERS who receives any amount of military disability pension may purchase up to four years retirement service credits for those years of active military duty (KRS 61.555).

Miscellaneous Employee Benefits

Health and Disability Coverage. Any city may provide retirement, disability, health maintenance coverage, or hospitalization benefits for its employees and officers. Hospitalization benefits or HMO coverage may be extended to the families of such officers or employees. A city has several options for establishing such plans, including purchasing coverage either independently or cooperatively or by operating either an independent or cooperative self-insurance program. If a city employs more than 25 persons and provides medical care coverage, it shall annually offer its employees the option to elect either standard hospitalization benefits or HMO coverage (KRS 79.080).

Senate Bill 164, enacted by the 1994 General Assembly allows cities, counties, and urban-county governments which are contributing members to any one of the state retirement systems to participate in state health insurance programs (KRS 79.080, 18A.225-18A.229).

Unemployment Compensation. Any city which employs more than one person is subject to the Unemployment Compensation Act, KRS Chapter 341. That Act establishes a program administered by the state which provides benefits to unemployed workers. The program is funded by contributions made by employers. The contribution rate of an employer is a percentage of wages paid on covered employees. The percentage of contribution is based upon the benefits paid that are chargeable to the employer. Elected officials are not covered under the law.

Workers' Compensation. Any city having more than one employee is mandatorily subject to the provisions of the Kentucky Workers' Compensation Law (KRS 342.630). Because a city is covered under the Workers' Compensation Law it shall be liable to pay compensation to any employee for any work-related injury, occupational disease, or death caused to the employee, without regard to fault (KRS 342.610).

A city must establish a method by which workers' compensation claims will be paid. It may purchase insurance from a company authorized to sell workers' compensation insurance. It may self-insure, in which case proof shall be furnished the state that it has the financial ability to

directly pay claims under the law. Upon furnishing adequate proof and acceptable security, a city shall receive a certificate of self-insurance. Finally, a city may join other local governments and form a mutual insurance association or reciprocal of inter-insurance exchanges (KRS 342.340 *et seq*.).

CHAPTER VIII

SPECIFIC MUNICIPAL POWERS

Notwithstanding the enactment of KRS 82.082 and the repeal of hundreds of municipal statutes, the KRS still contain several hundred statutes relating to cities. These statutes fall into three distinct categories: (1) statutes granting extraterritorial powers; (2) statutes limiting home rule authority; and (3) statutes granting specific municipal powers.

The existence of the first two categories of municipal statutes is consistent with the theory of home rule. The status of statutes in the last category is called into question by the existence of home rule.

Statutes granting extraterritorial powers are necessary because home rule is specifically limited to the corporate limits of the city. If a city is to exercise any power or perform any function outside the city it may do so only pursuant to a specific statutory authorization. In effect, Dillon's Rule continues to apply outside the city limits. Table 10 sets out statutes granting extraterritorial authority.

As discussed in Chapter IV, home rule is not a quitclaim deed of powers given by the Constitution and General Assembly to cities, for the legislature retains the right to pre-empt local legislation by statute. Generally such pre-emption occurs where a statewide interest supersedes the need for local autonomy. Examples of statutes limiting home rule discretion are KRS Chapter 83A, detailing organizational structure, KRS Chapter 91A, setting out requirements for financial administration, and Chapter 100, providing a framework for land use planning.

The third and largest group of municipal statutes are those laws enacted prior to home rule to grant cities the authority to perform various acts and functions. Since home rule broadly grants all possible municipal powers, these acts are not only unnecessary, but their existence poses a hurdle to the smooth running of home rule. The problem with the generally permissive enabling acts is that they may be construed as limiting the discretion a city has under home rule to perform a particular function. Unlike the statutes discussed previously, these enabling statutes were not intended to limit a city's ability to perform a function, but to enable a city to perform a function. Because of the strictures of Dillon's Rule, they usually outline in detailed fashion how power is to be exercised. The danger with the statutes now is that they will be construed as comprehensive schemes which cannot be varied by local legislation, thereby defeating the purpose of KRS 82.082.

Some of these statutes are comprehensive schemes of legislation. As discussed in Chapter IV, KRS 82.082 specifically mentions KRS Chapter 95, relating to police and fire departments, and KRS Chapter 96, relating to municipal utilities, as comprehensive schemes. However, many of the statutes are not comprehensive schemes, but merely cloud the effectiveness of home rule.

TABLE 10

SPECIFIC GRANTS OF EXTRATERRITORIAL AUTHORITY*

Authority	Class	Territorial Limit	KRS Citation
Construct flood control system	All	None	104.030
Develop riverport	All	Within economic environs of port	65.530
Operate mass transit system	All	Transit area & adjoining areas	96A.020
Operate street car system	2-3	10 miles	96.189
outside city	1	None	96.315
Establish/maintain parks, cemeteries, public ways	3	None	97.530
Condemn property for parks or cemeteries	3-4	None	97.540
Construct utility works or facilities	4	None	96.190
Construct water, light, power, heat or telephone works	3	None	96.170
Construct water or sanitary/sewer system	All	Territory contiguous to city	96.150
Construct electric light, heat or power plants	2-6	None	96.520
Construct waterworks	6	None	96.350
License sale of alcoholic beverages	1-3	Within county	243.230
Enact subdivision regulations	All	5 miles of city	100.131

*Does not include powers possessed by city when operating jointly with county.

Public Ways and Services

Airports

Any city may independently, or jointly with other units of local government, establish a nonpartisan air board. The board shall be a separate corporate entity and be operated by a six- or ten-member nonpartisan board. In a county containing a city of the first class which has in effect a cooperative compact between the city and the county, the board shall have ten members, two of whom shall be appointed by the Governor. In a consolidated local government, the board shall consist of eleven members with the extra member representing neighborhood associations located within a five-mile radius of the airport. The purpose of the board shall be to establish, maintain, operate, and expand "necessary, desirable, or appropriate" airport and air navigation facilities. The board may borrow money and issue revenue bonds in furtherance of its purposes (KRS 183.132-183.160).

Blighted and Deteriorated Properties

The urban renewal act may be used only for relatively large areas (so-called "development areas"). Its provisions are therefor unavailable for use against single or isolated

blighted and deteriorated properties. But KRS Chapter 99 also permits cities to condemn single property tracts which are found to be blighted or deteriorated. A city must adopt an ordinance which establishes a vacant property review commission which shall serve to certify property as blighted or deteriorated to the city legislative body. A property may only be certified if it is found that:

(1) the owner has been sent notices that the property violates city codes;
(2) the property is vacant;
(3) the property is blighted or deteriorated;
(4) the owner has been notified that the property is blighted or deteriorated and the owner has failed to take corrective action within the requisite time; and
(5) the planning commission (if one exists in the city) has determined that reuse of the property for residential or related uses is in keeping with the comprehensive plan.

Upon certification by the commission, the legislative body may institute eminent domain proceedings against the property if it finds that:

(1) the property has deteriorated so as to constitute a serious and growing menace to public health, safety and welfare;
(2) the property is likely to continue to deteriorate unless corrected;
(3) such deterioration will contribute to the blighting of the surrounding area; and
(4) the owner of the property has failed to correct the problem.

Once the city has acquired title to the property it shall have the power to hold, clear, manage, or dispose of it for residential and related uses (KRS 99.700—99.730).

For further discussion regarding the application of urban renewal statutes see *Prestonia Area Neighborhood Association, et al v. Mayor Jerry Abramson*, Ky., 797 S.W.2d 708 (1990).

Bridges

A city of the first class or consolidated local government may establish a bridge commission. The commission shall construct, maintain, repair, and operate bridges within or partly within and partly without the city. Revenue bonds may be issued for such purposes. The commission shall be composed of the mayor and four members appointed by the mayor with the approval of the board of aldermen (KRS 181.850-181.869).

A city of the second class may create a bridge commission to erect and control bridges owned by the city. The commission shall be composed of the mayor and four persons appointed by the mayor with the approval of the city's legislative body. The city may issue revenue bonds to construct or purchase interstate bridges. When the debt acquired to finance the bridge is paid off, the commission shall dissolve and the city shall assume control of the bridge (KRS 181.570-181.840).

The city may also contract with other persons to operate a bridge wholly or partially within the city (KRS 181.510).

Cemeteries

Any city, except the sixth class, may acquire title to property used as a cemetery if it deems such property abandoned, by authorizing the city attorney to institute suit to acquire title (KRS 381.720-381.767).

If a city owns and operates a municipal cemetery it is subject to regulation by the office of the Attorney General. The cemetery regulations are directed primarily towards cemeteries which

sell cemetery merchandise (i.e. memorials, urns, etc.) or mausoleums or underground crypts prior to the death of the purchaser.

The following summarizes the major elements of the Act:

(1) All existing cemeteries must register with the Attorney General within 180 days of July 13th, and file an annual report thereafter;
(2) All cemeteries must maintain certain accounting records and allow the Attorney General to audit such records;
(3) The minimum amount required to be in perpetual care and maintenance funds is increased;
(4) Cemeteries which sell cemetery merchandise on a pre-need basis are required to place 40% of the contract price in trust until such merchandise is provided;
(5) Cemeteries which sell mausoleums or underground crypts prior to construction are required to place 36% of the contract price in trust until completion of construction; must commence construction within 24 months of contract and complete within 60 months;
(6) Each cemetery shall pay to the Attorney General a fee of $5 for each pre-need cemetery merchandise contract entered into; and for each mausoleum or crypt contract, a fee of $5 if cost is less than $500, $10 if more than $500;
(7) The officers or owners of any cemetery may be held personally liable for violations of the Act; and
(8) Violation of the trust fund provisions of the Act is a Class C felony (KRS 367.932-367.974).

Whenever land or other property is needed for cemetery purposes, any city of the third or fourth class may condemn property in or outside the city by the Eminent Domain Act (KRS 97.540).

Colleges and Universities

A city of the first class may support a municipal university by levy of taxes, annual appropriation from general revenues, and other sources. It may appropriate land to the university and issue bonds for the use of the university, although any bond issue shall be approved by the voters. The board may establish a law school connected with the university (KRS 165.010-165.150).

A city of the second class may establish, acquire, and maintain a municipal college. The council may support the college through the issuance of bonds, a tax levy, or appropriations from funds other than tax revenues. The council may deed city-owned real property to the college (KRS 165.160-165.200).

Enterprise Zones

Originally established in 1982, the statutes relating to enterprise zones were substantially amended by the 1992 General Assembly through HB 66. An enterprise zone is a locally nominated, state designated area which is considered economically depressed and is targeted for economic stimulation through various tax breaks. Any city, county, or urban-county legislative body may designate an area within its jurisdiction as economically depressed and apply for its designation as an enterprise zone. Two or more local governments may join together to designate an area within their collective jurisdictions. Such joint designation must be pursuant to an interlocal cooperation agreement. To be eligible for designation, an area must:

(1) have a contiguous boundary; and
(2) be an area of pervasive poverty, unemployment, and economic distress.

The Enterprise Zone. Authority of Kentucky designates nominated areas as enterprise zones. Ten areas have been so designated, and KRS 154.670 seems to limit the total number of zones to the present ten. An area's designation shall remain in effect for twenty years. The boundaries of an established zone may be altered only if approved by the Authority. A designation may be withdrawn by the Authority if the area no longer meets the necessary criteria; however, businesses within such a zone shall retain their tax exemptions for the twenty-year period.

When an area has been designated an enterprise zone, qualified businesses in the zone shall be eligible for certain tax breaks. The tax breaks provided qualified business include:

(1) Building materials and equipment purchased by qualified businesses shall be exempt from sales and use taxes;
(2) Commercial vehicles purchased and used by a qualified business solely for business purposes shall be exempt from the motor vehicle usage tax, and on commercial vehicles purchased and used solely for business purposes shall be exempt only for the first $20,000 of the vehicle's retail price;
(3) Credit against the corporate income tax (KRS 141.040) equal to 10% (up to $1,500) of wages paid to qualified employees—this may be carried forward for up to five years; and
(4) Local governments may levy a reduced ad valorem tax on qualified property within a zone. Such tax is exempt from the 1979 HB 44 provisions of KRS Chapter 132.

To remain eligible for the above tax advantages, a new business, or an existing business certified on the basis of employee expansion, must maintain the required percentage of targeted workforce employees throughout the time it is certified as a qualified business in the enterprise zone program. In addition to the incentives provided by the state, local governments are authorized to provide other incentives (KRS 154.650-154.705).

The constitutionality of the enterprise zone program has been called into question by an Opinion of the Attorney General (OAG 92-86). Many of the statutes that authorize the enterprise zone program are deemed by it to be local or special legislation, in contravention of Sections 59 and 60 of the state Constitution. The selection process by which zones are designated and the statutory limitation placed upon their total number are the focal points of the opinion.

Selecting zones based on "preferences" rather than "expressed standards" leads to the constitutional difficulties, according to this opinion. Zones are not necessarily chosen because they represent the most economically depressed areas, and limiting the benefits to the first ten areas chosen "necessarily discriminates against other areas that might otherwise qualify for benefits on the basis of economic need." The foundation of this argument is that similarly situated areas are not guaranteed the same treatment under the law.

This opinion is, of course, not legally binding, and the state's Enterprise Zone Program continues to exist in the original ten locations. The boundaries of some of the zones have been altered, but the program remains in tact.

Flood Control

For the purpose of protecting property from flood, any city may extend a flood control system outside the boundaries of the city, through the construction, enlargement, maintenance, or

operation of walls or other barriers beyond the city boundaries. The city may acquire land or rights of way by purchase or eminent domain (KRS 104.030).

Housing and Urban Development

Any city may acquire, establish, or operate low-cost housing for the purposes of "providing adequate and sanitary living quarters for individuals and families." The housing so acquired may be managed and controlled through a housing authority composed of the mayor and four persons appointed by him with the approval of the legislative body. The authority may issue revenue bonds. The authority may engage in the maintenance and enhancement of adequate housing stock for low-income and moderate income persons. An authority may also participate in certain private or public developments for profit, as long as such profits are used to further the maintenance and enhancement of adequate housing stock. The city legislative body, by resolution, may establish jointly with a contiguous county, a city-county housing authority. A joint authority shall have an eight member board, four members appointed by the mayor and four appointed by the county judge/executive. In a county containing a city of the first class, special provisions apply if a cooperative compact between the city and the county is in effect. If separate city and county authorities already exist, such action may only take effect if requested by the existing housing authorities (KRS Chapter 80).

Any city may create an Urban Renewal and Community Development Agency to aid in the redevelopment of slum or blighted areas. The agency shall be managed by a five-member board appointed by the mayor (KRS 99.330-99.590). Each city of the first or second class, consolidated local government, or urban-county government shall establish a development agency. The agency shall be operated by a seven-member board of commissioners appointed by the mayor with the approval of the legislative body. The purpose of the agency shall be to assist in the preservation and revitalization of historically or economically significant areas. The agency may acquire title to land, issue revenue bonds and establish a revolving loan fund for housing rehabilitation. Such agency may be dissolved at any time by a three-fifths (3/5) vote of the legislative body which created it. (KRS 99.610-99.675).

Landlord-Tenant Law

Any city may adopt the provisions of the landlord-tenant law to regulate the relationship between landlords and tenants. While adoption is permissive, if adopted, all provisions of the law as set out in the KRS must be adopted without amendment (KRS 383.500-383.715).[115]

Libraries

Any city other than the first class may provide library service to its inhabitants by any of the following methods (as provided in KRS 173.300-173.410):

(1) The legislative body may establish a library;
(2) The inhabitants may petition for an election to be held on the question of the establishment of a library;
(3) Two or more units of local government may jointly create a regional library via the "Interlocal Cooperation Act"; or
(4) The city may contract with an existing library.

Upon the establishment of a library by any of the above methods, the city shall "make the necessary appropriation or levy to establish and maintain the library service annually and perpetually."

Control of the library shall be through a board of trustees composed of from five to seven members.

A city of the first class or consolidated local government may establish a free public library within the city. The library shall be managed by a board of trustees composed of twelve persons. The board may support the library through an annual appropriation (KRS 173.030-173.040). If the city and the county have in effect a cooperative compact, the board of trustees shall be dissolved and the library shall be operated as a joint city/county agency. An advisory board may be established (KRS 173.105).

House Bill 45 was enacted in 1994 to require the county clerk in counties containing a city of the first class which have entered into a compact with the city, to offer citizens the opportunity to donate funds to the public library when registering a vehicle pursuant to KRS 186.030. The clerk is entitled to the same commission as that payable on county taxes pursuant to KRS 134.805 (KRS Ch. 173).

Local Industrial Development Authority

Any city may establish a nonprofit Local Industrial Development Authority. The purpose of the authority is to aid in the "acquisition, retention, and development of land for industrial and commercial purposes." The authority shall be controlled by a board composed of six members. The authority may issue revenue bonds (KRS 152.810-152.930).

Management Districts

A city of the first class or an urban-county government may create a management district in order to finance economic improvements within designated areas of the city. Such districts are created by ordinance and improvements are to be financed by assessments which are levied on and collected from all property owners within the district. Oversight of the district is performed by a board of directors and other statutory requirements (KRS 91.750-91.762).

Mass Transit

Any city may independently, or jointly with other units of government, establish and operate a transit authority. The purpose of such authority is the promotion and development of mass transportation in the area. The authority shall be managed by an operating board. A transit authority may provide service outside the transit area (KRS Chapter 96A).

Any city may independently, or jointly with other local governments, establish a mass transportation program to secure financing to "operate and preserve" mass transportation facilities. Such a program shall be submitted to the approval of the voters (KRS 96A.310-96A.370).

A city must provide insurance or provide for self-insurance for coverage of its mass transit systems and their employees. (KRS 96A.180).

Any city of the second or third class may acquire or establish a streetcar system, and operate the system within the city and within ten miles beyond. The city may acquire or establish a bus or taxicab system. General obligation bonds may be issued for the financing of a mass transit system, if approved by a two-thirds majority of the voters (KRS 96.189). Any city may apply to the state Department of Vehicle Regulation for certification of a city bus line to be operated by the city (KRS 281.635).

Local transit authorities receive funds from the Kentucky Public Transportation Development Fund, which is the repository of all mass transit funds received by the state. The

fund is used to provide grants to local transit authorities to promote mass transit (KRS 96A.0906).

Neighborhood Redevelopment Zones

Any city, by ordinance enacted by the legislative body, may establish one or more neighborhood redevelopment zones. To be eligible for such designation, an area shall consist chiefly of residential buildings at least 25 years old and be characterized by:

(1) deteriorating housing stock;
(2) abandoned residential buildings or vacant lots;
(3) such other conditions which cause the area to be in a deteriorating economic or physical condition; or
(4) such detrimental conditions that the effect is to discourage mortgagees from making loans within the area.

A zone may be established either on the initiative of the legislative body or upon a petition of the owners or lessees of property within an area. A zone must be certified by the executive director of the Kentucky Housing Corporation.

The purpose for establishing neighborhood redevelopment zones is to encourage the rehabilitation of older urban residential neighborhoods. The heart of the program is the establishment of a mortgage guaranty fund administered by the Kentucky Housing Corporation to be used to enable mortgage insurance companies to insure mortgages in excess of 90% of the appraised value of the property covered by the mortgage, up to 125%. Properties are eligible for the program only if located within a zone. A city establishing a zone must offer certain other incentives to redevelopment and adopt a housing code within such zone (KRS chapter 99A).

Overlay Districts

Any city or consolidated local government which utilizes zoning regulations may by ordinance create an overlay district. The purpose of an overlay district is to supplement existing zoning regulations in a city by regulating repairs and renovations to buildings located within a specified area. Cities which create districts may delegate oversight responsibility of the district to city agencies, departments or non-profit city corporations (KRS 82.650-82.670).

Parking Authorities

Any city may independently, or jointly with the county, create motor vehicle parking authorities. Such authorities shall have the power to acquire, create, and operate public street and off-street parking facilities. The governing board of the authority shall be composed of from five to six members appointed by the mayor with the approval of the legislative body (KRS 94.810-94.840).

Parks and Recreation

KRS Chapter 97, relating to parks, playground and recreation, is not an orderly scheme of legislation, but instead a body of disparate laws enacted to meet various ad hoc needs, with little attention paid to previous law on the same subject. In many ways the chapter is a prime example of the confusing melange of laws resulting from adherence to Dillon's Rule.

Most of the statutes in Chapter 97 are permissive. The following summarize the chapter in numerical order.

The acquisition, development and maintenance of parks, playgrounds and recreation centers, including parks and museums is a proper municipal purpose. The city may acquire land for such purposes. Local governments may jointly establish and maintain a park system (KRS 97.010).

The legislative body of a city may establish a park, playground and recreation system. Control of the system may be delegated to a park board, the board of education, a playground and recreation board or some other existing board (KRS 97.020).

A city may establish a park and recreation board by ordinance or resolution. The board shall be composed of five persons appointed by the mayor (KRS 97.030).

Two or more local governments may jointly operate and maintain a park and recreation system, zoo or museum. The system shall be controlled by a joint board composed of not less than five members. In counties containing a city of the first class, in which a cooperative compact is in effect, the joint board shall be dissolved and the system operated as a joint city/county agency (KRS 97.035).

Any authority operating parks or recreation centers may accept gifts of real or personal property (KRS 97.040).

The city legislative body may appropriate general fund revenues to an established park system (KRS 97.050).

Park and recreation boards may issue revenue bonds for appropriate purposes (KRS 97.055).

The city legislative body may by ordinance impose user fees for park facilities (KRS 97.090).

KRS 97.100-97.240 authorizes any city to establish and maintain municipal recreational projects which are not "in connection with the maintenance of public parks established by a city under the general law." Any such projects shall be operated by a city recreational commission composed of three to seven members in cities of the first and second class and three members in cities of other classes. The members shall be appointed by the mayor with the approval of the legislative body. The city may issue revenue bonds to finance the project.

In cities of the first class there shall be a department of public parks and recreation under the supervision of a director (KRS 97.250).

Title to all real and personal property acquired for parks, airport or aviation field purposes shall be held by the city in trust for public purposes (KRS 97.252).

In cities of the first class, employees of the parks and recreation department shall be under civil service, with enumerated exceptions (KRS 97.252).

Police may make arrests on park property in cities of the first class (KRS 97.255).

Cities of the first class may condemn property for park purposes (KRS 97.257).

Cities of the second class shall have control of all parks, boulevards, parkways and public squares and may:

(1) acquire property for such purposes by purchase or condemnation;
(2) lay out and design improvements;
(3) protect property from injury and decay;
(4) adopt rules for use;
(5) prevent disorderly and improper conduct;
(6) Control planting of shade trees along public ways; and
(7) exercise police powers (KRS 97.441).

Each city of the second class shall establish a Board of Park Commissioners composed of five to seven members appointed by the mayor with the approval of the legislative body (KRS 97.455). The board shall be an advisory board only (KRS 97.465).

A city of the second class may, by ordinance, establish special park police (KRS 97.475).

The legislative body of a city of the third class may acquire, establish and maintain cemeteries, parks, squares, avenues, promenades and fountains within or outside the city limits (KRS 97.530).

A city of the third or fourth class may condemn property either within or outside the city for park and cemetery purposes (KRS 97.540).

Any city of the fourth class may acquire property for parks or playgrounds within the city. A park board may be established composed of not more than five persons (KRS 97.550). Boards members shall execute an oath (KRS 97.560). The board shall have control of all parks and playgrounds within the city (KRS 97.580).

Any city of the fourth class may levy a special tax for the purpose of public parks, not to exceed $0.05 per $100 (KRS 97.590).

Any city, except one of the first class, may levy a special tax for the maintenance of a band or orchestra. Such tax may only be levied if a citizen petition is received and the levy is approved by referendum. The tax may not exceed ten mils (KRS 97.610). The tax may be repealed by referendum (KRS 97.620).

Any city which has constructed a war memorial shall establish a war memorial commission. In cities of the first class the commission shall be composed of seven members. In all other cities, the commission shall have fifteen members. The remaining members shall elect successors for those whose terms have expired (KRS 97.630). The legislative body in cities of the first class shall annually appropriate funds to the commission. Cities of the second through sixth class may levy a special tax, not to exceed $0.05 per $100, for the purposes of the commission (KRS 97.700). KRS 97.640-97.780 provide rules for the operation of the commission.

There is a local government parks and recreational facilities fund that is administered by the commissioner of the Department for Local Government. The commissioner may make matching grants to local governments from this fund for the acquisition and establishment of local parks and recreational facilities. The grant may not exceed $100,000 or 50% of the costs of the project, whichever is the lesser, and the local government must provide matching funds (KRS 147A.028). Monies for this program fund are available only if funds are provided in the state budget.

Public Utilities

A public utility is an entity which supplies a service "of such nature that it is said to be clothed with the public interest."[116] Typically public utilities include suppliers of gas, electricity, water, sewers, waste disposal, railroads, telephones and cable television.

A city authorizes a utility to operate within the city through the granting of a franchise. A franchise is "a right or privilege, essential to the performance of the primary purpose of the grantee, which can only be granted by the government."[117] A franchise for a utility may be granted to either a private individual or company or the city may operate the utility as a department of the city or through a quasi-municipal corporation.

Sale of Franchises Generally. Section 163 of the Kentucky Constitution prohibits utilities from constructing works along public ways of a city without receiving the consent of the

city legislative body. The list of public utilities subject to franchise contained in Section 163 is not exclusive. The Supreme Court has stated that:

> This court has ruled decisively that services other than those enumerated in Section 163 of the Kentucky Constitution are subject to franchise. It will be noted that Section 163 deals with certain specific subjects, to-wit, street railway, gas, water, steam heating, telephone or electric light companies within a city or town. We do not believe the right granted cities by this section is today limited to these specific utilities. The purpose of the section was to give the city control of the streets, alleys and public grounds and to make it possible for the city to provide the services of these utilities to its inhabitants. Therefore, the right granted is not and properly should not be restricted to those utilities enumerated, but applies to all utilities and services which might today be proper subjects for control, when the original intent and purpose of the act is considered.[118]

Section 164 limits the duration of franchises to twenty years, and requires that they be awarded to the highest and best bidder after due advertisement. Unless it is determined that the service should be discontinued because there is no public necessity for the service, a city shall advertise for bids for the sale of a new franchise at least 18 months prior to the expiration of each franchise granted by the city. The new franchise shall be granted to the highest and best bidder (KRS 96.010). Each bidder for a franchise, except the person holding the old franchise, shall make a deposit equal to 5% of the costs of the plant necessary to provide the service (KRS 96.020).

A city of the first class or consolidated local government may purchase the property of any public utility franchise and operate the utility as an agency of the city. Notice of the city's intention to purchase shall be given two years prior to the expiration of the franchise (KRS 96.040).

No city in which there is located an existing utility may construct a facility providing the same service as the existing utility, but a city may acquire such utility by purchase or through eminent domain (KRS 96.045).

The legislative body in a city of the second class may regulate the construction, location, and operation of various utilities, including railroads, bridges, telephone and telegraph companies, and gas and electrical companies (KRS 96.050).

The legislative body in a city of the third or fourth class may grant rights of way over public ways and grounds, for terms not to exceed twenty years, to various utilities. The city retains the right to regulate the equipment located within the rights of way (KRS 96.060 and 96.070).

The legislative body in any city of the fourth class may provide utility service to the residents of the city through works or facilities owned by the city or by contract with a person or corporation providing such services. The works or facilities may be located within or beyond the city (KRS 96.190).

The legislative body in any city of the third class may provide for the furnishing of water, light, power, heat, and telephone service to residents. Such services may be provided by contracting with a local provider, or by city works located within or beyond the city limits. The city may regulate any provider, and fix the prices charged for the provided services (KRS 96.170).

Cities of the sixth class may sell or transfer a municipal utility without an election if the situation is a declared emergency and 2/3 of the utility customers sign a petition approving the transfer (KRS 96.5405).

Preferential retail rates for utility services shall not be given to any entity receiving state or local funds which account for 50% or more of its operational expenses (KRS 278.035). However, a fire department may receive free or reduced service from a provider, defined in KRS 278.010(3)(d), for training or firefighting, if proper arrangements are made (KRS 278.170).

Energy. Municipally controlled energy utilities are not subject to regulation by the Public Service Commission (KRS 278.010).

Any city of the first class may sell any stock it holds in a gas company doing business in the city. Proceeds from the sale shall be used for the construction of sewers (KRS 96.090).

Any city of the third class may provide for the furnishing of water, light, power, heat or telephone services either by contract or by construction of works located within or outside the city (KRS 96.170).

Any city of the third class may operate a combined electric and water system. The system shall be controlled by a quasi-municipal corporation known as the "Electric and Water Plant Board of the City of ___." The governing body of the board shall be composed of five members appointed by the mayor who are citizens, taxpayers, voters, and users of electric energy or water (KRS 96.172-96.188).

Any city of the fourth class may provide for the furnishing of water, gas, electric power, light, heat or telephone and telegraph, either by contract or through the establishment of works located within or outside the city (KRS 96.190). Revenue bonds may be issued for the construction of power plants or waterworks (KRS 96.195).

Any city of the fifth or sixth class may contract for the furnishing of light or water (KRS 96.210 and 96.220).

Any city of the second through the sixth class may purchase, establish and operate electric light, heat and power plants, located within or outside the city. Such plants may be operated in conjunction with any other power plant which is regulated by the energy commission. A city of the second through sixth class may sell power to any electric, combination electric or gas utility, or its affiliate that is regulated by the Kentucky Public Service Commission, or a city-owned utility established pursuant to KRS Chapter 96 (KRS 96.520). The purchase of such a plant by the city must be approved by referendum, after the filing of a petition signed by 200 city residents with the city (KRS 96.520). A power plant thus acquired shall be controlled by a City Utility Commission, composed of five members in cities of the second class and three members in cities of other classes (KRS 96.530). Revenue bonds may be issued by cities of the second or third class to purchase power plants or waterworks (KRS 96.535).

Any city of the third class operating a natural gas distribution system under the authority of KRS 96.170 may issue revenue bonds to finance improvements (KRS 96.537).

Any city may acquire and operate an artificial gas system (KRS 96.542). The acquisition is subject to petition and referendum approval (KRS 96.543). An artificial gas system may be operated as a department of the city, or under an existing utility commission, or an artificial gas commission composed of seven members may be established (KRS 96.545).

KRS 96.550-96.900, known as the "Little TVA Act," provides an alternative method for cities to establish electric plants within or without the city. In order to construct a plant or issue revenue bonds therefor the city must receive the approval of the residents of the city pursuant to

referendum. The power plant shall be controlled by a four member board appointed by the mayor, called the "Electric Plant Board of the City of _____. _____."

Water and Sewers. A city of the first class or consolidated local government may purchase a waterworks operating within the city. The waterworks shall be controlled by a board of waterworks, composed of the mayor and four members appointed by the mayor. The board may issue bonds (KRS 96.230-96.315).

Any city of the second class which owns a waterworks may operate it as a department of the city or under a board composed of three to six members appointed by the mayor with the approval of the legislative body, and called the Commissioners of Waterworks (KRS 96.320). The net revenues derived from the waterworks shall be used for improvements to public ways (KRS 96.330).

Any city of the second through the sixth class may establish and operate a waterworks system within or outside the city. A sewerage system may be operated in conjunction with the waterworks (KRS 96.350-96.510).

If a city desires to purchase a waterworks it must publish the purchase agreement 45 days prior to the date of sale. The purchase must be approved by referendum if a petition is received signed by a number of city residents equal to 25% of those voting in the last election (KRS 96.360). The city may issue bonds to finance the acquisition (KRS 96.370).

Any city of the third class operating under the council form of government which is located in a county with a population over 50,000 and which does not contain a city of the first class or an urban-county, and which operates a waterworks or a combined waterworks and sewerage system, may establish a Waterworks Commission or a Waterworks and Sewerage Commission. The commission shall be composed of the mayor and three or five members appointed by the mayor (KRS 96.351).

Any city of the second through the sixth class may provide water for fire protection and the use and convenience of its inhabitants. Police protection may be provided for works located outside the city (KRS 96.350).

The legislative body of any city of the fourth class may impose fines for persons convicted of vandalizing the waterworks system (KRS 96.340).

A city of the first class and the county fiscal court may create a joint Metropolitan Sewer District, "in the interest of the public health and for the purpose of providing adequate sewer and drainage facilities." The district shall be governed by a board composed of seven members, four appointed by the mayor, with the approval of the board, and three appointed by the county judge/executive. HB 88 from the 1992 Regular Session requires an MSD to provide for the resolution of specified citizens' complaints and grievances through an independent hearing officer (KRS Chapter 76).

Any city of the second class, jointly with the county, may establish a joint sewer agency, by the enactment of identical ordinances by the county fiscal court and the city legislative body. Such agency shall have all powers granted a metropolitan sewer district by KRS 76.010-76.279 except that such powers may be restricted or qualified by the establishing ordinance. Such agency shall be administered as a separate legal entity, or by a jointly appointed administrator or board, as determined by ordinance. Any city of the third through sixth class may elect to be within the jurisdiction of the joint sewer agency. The joint agency may be dissolved by joint action of the city legislative body and the county fiscal court (KRS 76.231).

Any city which operates a water or sanitary sewer system may provide such services to persons within territory contiguous to the city, except that if such territory is served by an existing water or sewer system, the city may extend service to the territory only if requested to do so by the district serving the territory. An amendment by the 1992 General Assembly (HB 17) requires cities to consider installing fire hydrants when extending water service to new territory (KRS 96.150).

Any city may classify sewer users upon a reasonable basis for the purpose of establishing different service rates. Such classifications shall be established by ordinance. A hearing must be held before the classifications go into effect (KRS 96.910-96.927).

Any city may enforce the payment of sewer charges by requiring that water service be discontinued until the delinquency is paid (KRS 96.930-96.943).

No city of the second through sixth class which owns a waterworks system shall sell, convey, or lease such system without holding an election on the question and receiving the assent of a majority of those voting (KRS 106.200).

The board of waterworks in a city of the first class may recover by assessment the costs of extending waterlines to areas not previously served. (KRS 96.315)

Any city included in the boundaries of a water district for ten years is deemed to have given consent for such service. This validates a city's membership in a water district in the absence of an ordinance or resolution authorizing such participation (KRS 74.120).

Joint sewer agencies may utilize an exemption to the requirement for uniform rates for a period not exceeding ten years from the date of the creation of the joint sewer agency if warranted by local conditions (KRS 76.231).

Kentucky Privatization Act. Establishes a procedure to permit cities and counties to contract with private entities to construct or operate water or wastewater facilities. Such a contract is to be known as a "privatization contract" and may be entered into either to transfer the operation of an existing water or wastewater facility or for the construction of a new facility.

A privatization contract must be approved by ordinance enacted by the legislative body. Notice must be published at least 30 days prior to the adoption of the ordinance and a hearing must be conducted by the executive authority. Notwithstanding whether the city has adopted the model procurement code, the privatization contract may be awarded by competitive bidding, competitive negotiation or negotiation.

In conjunction with the privatization contract, the city may enter into a service contract with the private operator. The service contract shall provide that the city shall purchase the output of the facilities, specify what rates shall be charged, and include such other matters as agreed upon. The same procedure required prior to executing the privatization contract must be followed prior to executing the service contract. The privatization and service contracts shall not be subject to regulation by the Kentucky Public Service Commission.

If the privatization contract provides for the transfer of an existing facility from the city to the private operator, it shall be subject to a recall pursuant to the public question provisions of KRS 83A.120 (KRS 107.700-107.770).

Miscellaneous Provisions. Any city of the third through the sixth class may provide by ordinance for the use of profits generated by a municipal utility (KRS 96.200).

Any utility providing service in an area subsequently annexed by a city shall have the dominant right to continue providing such service (KRS 96.538).

Except as provided in KRS 96.171-96.188 and KRS 96.5405, no city of the second through the sixth class which owns a waterworks system or lighting system by gas or electricity

shall sell, convey, lease or encumber such system unless approved by referendum. The requirement does not apply to revenue bonds (KRS 96.540).

In lieu of the referendum required by KRS 96.540, a city of the sixth class, in a declared emergency, may sell, lease or transfer its utility system after obtaining a two-thirds (2/3) approval of the utility's customers by petition (KRS 96.5405).

Any city utility may use the power of eminent domain to acquire land or easements for the purpose of constructing dams or pipelines (KRS 96.547).

Municipally owned electric utilities may not increase rates except after a public hearing. Rates must be the same for users inside and outside the city (KRS 96.534).

Any city operating a power plant or waterworks may acquire a franchise to furnish water or light to any other city (KRS 96.120). Such a city may also contract with any other city for the furnishing of light and water (KRS 96.130).

If any city (but not an urban-county) proposes to furnish sewage treatment services to persons already serviced by a sewage treatment utility and the city intends to use the installations of such utility, it shall make just compensation to such utility for the installations taken over. If the city and the utility cannot come to an agreement on the purchase, the city may acquire such facilities through condemnation pursuant to the eminent domain act (KRS 65.115). A portion of this statute has been declared "unconstitutional" by the state courts. See Ky. Court of Appeals 98-CA-000770 and Ky. Supreme Court 2000-SC-000496—Spanish Cove Sanitation District v. Louisville Jefferson County Metropolitan Sewer District.

Municipal electric utility commissions in cities of the second or third class that provide civil service coverage for city employees may provide civil service coverage for their employees (KRS 96.530).

Public Ways

Streets, roads and other rights of way are acquired by a city through dedication. "Dedication is the setting apart of land for public use."[119] Pursuant to KRS 82.400, a public way may become dedicated to public use if accepted by ordinance enacted by the legislative body of the city. Public ways or easements become eligible for dedication in four situations:

(1) The filing with the legislative body of a plat or map showing the proposed name, nature and dimensions of the public way or easement;
(2) The annexation of public ways or easements which have been previously dedicated to public use;
(3) The acceptance of streets or public ways which are dedicated and constructed as provided in approved subdivision regulations authorized by KRS Chapter 100; and
(4) When property has been open to "the unrestricted use of the general public for five consecutive years."

To close a public way, the city shall enact an ordinance closing the public way, then file an action in Circuit Court naming all abutting property owners as defendants. If no defendant objects within 20 days of service, the court shall render a decree closing the street. If any defendant objects, the court may award damages in the manner prescribed by the Eminent Domain Act (KRS 82.405).

An alternative procedure for closing a public way located within a city is provided in KRS 82.405. If all property owners abutting all or any portion of a public way are identified, notified, and given notarized consent to the closing, the city legislative body may enact an ordinance declaring all or any portion of the public way closed.

The Department of Highways may designate city streets as part of the state primary road system, in which case they will be maintained by the state (KRS 177.020). A city may elect to assist in maintaining a street which is part of the primary road system (KRS 177.055).

Cities, either individually or jointly with any federal, state or local agency, may construct and maintain limited access facilities (KRS 177.220-177.310).

A city may by ordinance establish speed limits within its jurisdiction, though no state highway speed limit currently set at 55 m.p.h. may be altered in excess of 55 m.p.h. (KRS 189.390).

Cities may request up to two signs from the Transportation Cabinet to honor or commemorate a birthplace, event, or accomplishment if the city pays for the cost of the sign and its installation (KRS 177.037).

A city may enter into an agreement with the county for the county to perform work upon or provide materials or personnel for work upon city streets. The city shall pay the costs of such assistance (KRS 178.010).

Riverport Authorities

Any city or consolidated local government may establish independently or jointly with other units of local government a riverport development authority. The purpose of such authority is to attract and promote river-oriented industry through the establishment of riverport facilities. The city may levy a tax for the benefit of the authority (KRS 65.510-65.650). The authority may issue revenue bonds pursuant to KRS Chapter 103. It may acquire and develop property or rights of property in the home county or in any county adjacent to it (KRS 65.530).

Solid Waste Disposal

The 1990 General Assembly and the 1991 First Extraordinary Session brought sweeping reforms in the area of solid waste management. A wide-ranging state policy was implemented which includes universal collection, solid waste reduction goals, solid waste reporting and records management, comprehensive solid waste management planning, increased oversight of solid waste disposal facilities, tax exemption incentives for recycling efforts, a waste tire program, technical assistance and educational programs. See KRS Chapter 224 for details and requirements relating to solid waste.

Health and Human Services

AIDS Education

The 1990 General Assembly enacted an expansive piece of legislation relating to acquired immune deficiency syndrome (AIDS). KRS 214.600-214.635 creates a public education and protection program addressing AIDS and human immunodeficiency virus (HIV) infections. Included in this legislation are mandates requiring law enforcement personnel to receive continuing education concerning AIDS and the adoption of AIDS policies for inmates in local correctional facilities.

Air Pollution Control

The legislative body of any city of the first or second class and the fiscal court of the county may establish an Air Pollution Control District. The district shall be governed by a board

composed of seven members, four of whom shall be appointed by the mayor, with the approval of the legislative body (KRS Chapter 77).

Various sections of KRS Chapter 77 were amended by HB 484, in 1994. These amendments include: allowing air pollution control boards to set emission standards; establishing procedures for adoption of regulations by control boards; allowing districts to assess additional permit fees; establishing an Air Quality Trust Fund; and giving the air pollution control board regulatory authority over the district and abolishing the hearing board in a county with a city-county compact.

02 HB 618 requires the elimination of vehicle emissions programs in counties containing a consolidated local government (CLG) if such counties are in compliance with air quality standards. Permits the CLG to determine the methods for compliance should the county fall below allowable air quality standards (KRS Chapter 77).

Ambulance Service

An ambulance service district, for the purpose of providing emergency ambulance service, may be created by any city, county or combination of local governments. The district shall constitute a special taxing district, with the power to impose an ad valorem tax, not to exceed ten cents on each $100 of property. The district shall be created by the city legislative body in accordance with the provisions of KRS 65.182.

The district shall be controlled by a board of directors, the composition of which is dependent upon which local government established the district. If the district consists of one city, the board shall have three members, appointed by the legislative body; if more than one city, the largest city shall appoint two members and the other cities shall each appoint one member. In districts established by a county, each city of the first three classes (or the city of the highest class, if there are no such cities) shall appoint a member to the board (KRS 108.080—108.180).

Any city may contract with private persons, partnerships, or corporations for the purpose of providing ambulance service to the residents of the city (KRS 65.710).

Any person who is a member of an ambulance service, with permission from the head of the service, may equip his vehicle with red flashing lights and a siren to be used when responding to an emergency call (KRS 189.950).

Emergency Medical Technician (EMT) first providers and paramedics are permitted to administer injections and treat allergic reactions. Ambulances are required to stock prescribed allergic reaction medications.

Board of Health

In counties containing a city of the first class or consolidated local government, there shall be a joint city-county health agency known as the " (name of city of the first class) and (name of county) County Board of Health." The board shall be composed of eight resident members; four shall be appointed by the mayor and four by the county judge/executive. The mayor and the county judge/executive shall be ex officio members. The board shall operate the city-county board of health pursuant to KRS 212.350-212.410. In a consolidated local government, the board and its members shall be appointed and operate as provided (KRS 212.350).

In counties containing cities of the second class, the legislative body of such city and the fiscal court of the county may establish a city-county board of health. The board shall be composed of 11 members; the mayor or the city manager, as determined by the city legislative

body, the county judge/executive, one dentist, one registered nurse and three physicians, one veterinarian, one engineer engaged in the practice of civil or sanitary engineering, one optometrist, and one lay person knowledgeable in consumer affairs, appointed by the secretary of the state Cabinet for Human Resources. (KRS 212.640-212.710).

Except in counties containing cities of the first class, the fiscal court may submit to the voters of the county a proposal to establish a public health taxing district for purposes of the health department. A majority of those voting must approve the plan for its implementation (KRS 212.720-212.760).

Independent district boards of health and independent departments of health may be created in areas which are part of an interstate metropolitan statistical area where the Kentucky population exceeds 250,000 persons. If such a district is formed, it shall have jurisdiction in all counties and cities within the district. The mayor of each city of the second class, or his designee, shall serve as an ex officio member of the new district board or department of health (KRS 212.780-212.794).

Combined Welfare Agency in Counties Containing a City of the First Class

The board of aldermen in a city of the first class and the fiscal court of the county may jointly establish a city-county agency for the administration and supervision of "all forms of public assistance, general relief, and social services to adults and children in homes or eleemosynary institutions; city and county penal institutions including the establishment of rules and regulations for the custody, government, and parole of inmates; other public welfare activities or services which are placed within the control of the city or fiscal court" (KRS 98.180).

"911" Emergency Telephone Service

Any city, either independently or jointly with other local governments pursuant to an interlocal cooperation agreement may establish a "911" emergency telephone service. Such service may be funded by a special tax, license or fee. Such tax may include a "charge to be collected from local exchange telephone subscribers in the area to be served by the 911 service on an individual exchange line basis limited to a maximum of 26 exchange lines per account" (KRS 65.750-65.760).

Hospital in City of the First Class

The board of aldermen in a city of the first class may build, establish, or purchase a hospital or home for the aged and the infirm. It may establish a building commission to supervise the acquisition of the facility. The commission shall be composed of four members appointed by the mayor, with the approval of the board, the mayor serving as ex-officio member (KRS 98.040-98.170).

Regulatory Powers

Adult Establishments

Any city may regulate the location of "adult establishments" by either requiring them to be dispersed throughout the city or by concentrating them in one area. "Adult establishment" is defined as including adult bookstores, adult motion picture theaters or adult mini motion picture theaters (KRS 82.088).

The regulation of "adult establishments" selling sexually explicit materials in this manner was authorized by the Supreme Court in *City of Renton v. Playtime Theatres, Inc.*[120] Because the selling of such materials is generally protected by the first amendment guarantee of freedom of speech, it is difficult for local governments to prohibit such activities. However, the court stated that merely requiring such establishments to be located in certain areas does not violate the first amendment, but constitutes a "content-neutral" time, place and manner regulation. Such regulation is not aimed at the content of the materials sold but at the secondary effects of such establishments. "The ordinance by its terms is designed to prevent crime, protect the city's retail trade, maintain property values, and generally protect and preserve the quality of the city's neighborhoods and the quality of urban life, not to suppress the expression of unpopular views."[121]

The court set out a test for whether a time, place and manner of regulation will be deemed to be "content-neutral" and therefore permissible:

(1) The regulation must be designed to serve a substantial governmental interest; and
(2) The regulation must not unreasonably limit alternative avenues of communication (i.e., the adult establishment must be able to locate somewhere).

Alcoholic Beverages

Any city may license and regulate premises selling alcoholic beverages by the package when located within a county which permits trafficking in alcoholic beverages. In all other counties, only cities of the first four classes may permit the sale of alcoholic beverages. The sale of alcoholic beverages in a city located in a county which prohibits the sale of alcoholic beverages requires a special "local option" election; a majority of the residents of the city must vote in favor of ending prohibition (KRS 242.125). In a city of the second class located within a "dry" territory, if the legislative body determines that an economic hardship exists, an election may be held in one or more voting precincts located within the city for the purpose of designating such precincts as "limited sale precincts" (KRS 242.1292). In any city of the first four classes which has voted "wet," the legislative body must establish the office of alcoholic beverage control administrator or assign his duties to an existing office. The administrator shall be appointed by the mayor, except in city manager plan cities, where he shall be appointed by the city manager (KRS 241.160). The administrator shall have the same functions with respect to city licenses and regulations as the state ABC Board has with respect to state licenses (KRS 241.190).

Any city or consolidated local government where the sale of alcoholic beverages is permitted may impose license fees on the manufacture and sale of alcoholic beverages. Licenses must correspond, in their provisions and business authorized, to those issued by the state pursuant to KRS 243.030 and 243.040. Fees imposed may not exceed twice the amount of state fees (KRS 243.070). 1994 legislation amended KRS 243.070 to permit a city to add to those upon whom the city may impose a license fee: a supplemental bar licensee; special temporary wine licensee; caterer licensee, and other special licensees determined by the state board as necessary. 1996 legislation added souvenir retail liquor licenses to this list. Licenses to sell alcoholic beverages by the package may be issued only for premises located within the city and in addition, cities of the first three classes may license premises located in the county outside the city if the county maintains an adequate police force [KRS 243.230(3)]. Cities of the first three classes may issue licenses to sell alcoholic beverages by the drink to premises located within the city, or in the county outside the city, if the county maintains an adequate police force [KRS 243.230(1)]. Cities of the fourth class may issue special licenses to specified premises located

within the city to sell alcoholic beverages by the drink if approved by the voters of the city in a referendum (KRS 243.230(2)) or upon adoption of an ordinance if the city, or a county containing such a city, has determined that an economic hardship exists within the city or county. (KRS 242.185).

The legislative body of any city of the first four classes which permits the sale of alcoholic beverages shall have the exclusive right to establish the times and hours alcoholic beverages may be sold (KRS 244.290). The legislative body of any city of the first or second class which permits the sale of alcoholic beverages may, by ordinance, authorize the issuance of licenses permitting the sale of liquor and wine by the drink on Sunday. Such licenses may be issued only to hotels, motels and restaurants which seat more than 100 persons and which derive at least 50% of gross income from the sale of food (KRS 244.290). The sale of liquor by the drink on Sunday may be permitted in urban-county governments only if approved by the voters of the urban county in a referendum (KRS 244.295).

Cities of the fourth class—and counties containing such cities—which permit the sale of liquor and wine by the drink in hotels, motels, inns and restaurants, as provided by KRS 242.185, may also provide for and regulate liquor and wine sales on Sunday to those same establishments (KRS 244.290).

City alcoholic beverage licenses shall be issued and fees collected by an official designated by the legislative body. The form of the license shall be prescribed by the city ABC administrator or by the state ABC board, if there is no city beverage administrator. The city clerk shall notify the state ABC board of the fees imposed by the city legislative body (KRS 243.610).

No applicant for a state license to sell alcoholic beverages within a city shall qualify for such license until his application for a city license has been granted (KRS 243.370).

The legislative body of any city of the third or fourth class which permits the sale of alcoholic beverages may levy a regulatory license fee upon the gross receipts of every establishment selling alcoholic beverages. The fee shall be in addition to any other authorized tax or fee and shall be levied at the beginning of the fiscal year (KRS 243.075).

If a county-wide election to reinstate prohibition is held in any county which permits the sale of alcoholic beverages, the votes thereon shall be counted separately in each city of the first four classes, and the sale of alcoholic beverages shall not be prohibited in such cities unless a majority of the votes cast in the city are in favor of prohibition. However, if any city of the first four classes has voted against prohibition in the preceding three years, alcoholic beverages shall continue to be permitted notwithstanding the results of the county-wide election. Individual precincts in a city of the first four classes may hold an election for the purpose of prohibiting the sale of alcoholic beverages in such precincts (KRS 242.125).

Any area annexed by a city of the first four classes shall assume the local option status of the annexing city, though any precinct in the annexed territory still retains the right to determine its own status (KRS 242.190).

A special, temporary spirits and/or wine license may be issued to any regularly organized fair, exposition, racing association or other party when the Alcoholic Beverage Control board believes the necessity for a license exists. Such licenses shall be for a specified and limited time not exceeding 30 days and all restrictions and prohibitions applying to regular retail drink licensees shall also apply to special license holders (KRS 243.260).

Temporary alcoholic beverage licenses are authorized for facilities conducting intertrack horse racing. A limited sale precinct election is authorized in those counties containing a third or

fourth class city which has a horse track and is seeking a retail drink license for the track (KRS 230.350).

Airports

Local governments are prohibited from regulating private airstrips (KRS Chapters 411 & 413).

Blue Laws

Any city may permit or prohibit retail sales on Sunday within the city limits (with the exclusion of activities permitted by KRS 436.160). If the city has not permitted such retail sales, the question of such permission shall be put to an election by the residents of the city, if a petition requesting such an election is received, signed by a number of registered voters equal to 25% of the number who voted in the last general election (KRS 436.165).

Buses

Any city may sell franchises or grant authorizations for the operation of buses within the city, providing the Department of Vehicle Regulation has found, after a hearing, that there is a demand and necessity for the service (KRS 281.635).

Cemeteries

All cities shall protect any burial grounds within the city limits from being used for dumping grounds, building sites, playgrounds, places of entertainment and amusements, public parks, athletic fields, or parking lots (KRS 381.690). The city may require the owner of any burial grounds to care for them properly (KRS 381.700).

City Sealer

Any city of the first, second, or third class may provide for a city sealer of weights and measures (KRS 363.680).

Gun Control

No city shall enact any ordinance or promulgate any regulation relating to the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, or components of firearms or combination thereof (KRS 65.870). However, the concealed weapons bill, HB 40 of the 1996 Session, allows local governments to stipulate, through the passage of an ordinance, administrative regulation, or statute, whether concealed weapons are to be allowed inside buildings, or portions of buildings, leased, owned or controlled by the local government. Certain exceptions apply, such as public housing, rest areas, firing ranges and private dwellings owned, leased or controlled by the local government. If a local government chooses to exercise control over concealed weapons, it must post signs at the entrance of the restricted areas. An employee of the local government may be subject to disciplinary action from the local government for bringing a concealed weapon into a restricted area, but others are only subject to ejection or denial of entry. No other penalty may be assigned by the local government (KRS 237.115). The local government will not be in violation of KRS 65.870 if it is in compliance with KRS 237.115.

Hazardous Waste Disposal

The legislative body of any city in which location of a hazardous waste landfill or other site or facility for the land disposal of hazardous waste is proposed shall hold a public hearing and approve or disapprove such facility (KRS 224.40-310). Other provisions for the regulation of hazardous waste disposal can be found in KRS Chapter 224.

Land Use Control

KRS Chapter 100 establishes a comprehensive scheme for land use control by local governments. The regulation of land use pursuant to KRS Chapter 100 is permissive, but in counties with a population of 300,000, establishment of a county-wide planning unit is mandatory (KRS 100.137). The chapter establishes a process which must be completed as a prerequisite for land use regulation by cities and counties. "The long-range purpose of these sections is to force the cities and counties to rely on planning in the implementation of land use controls."[122] An omnibus revision of Chapter 100 was enacted by the 1986 General Assembly.

Planning Units. If a local government elects to control land use within its jurisdiction, it must first establish the planning unit, i.e., the area subject to land use control. Three types of planning units are permitted: independent, joint city-county, and groups of counties (KRS 100.113). A city or a county may establish an independent planning unit only if a joint city-county unit cannot be established. Procedure requires that all local governments in the county be interrogated to see if a joint unit can be established (KRS 100.117). The purpose of this requirement "is to encourage the formation of functional units, so that planning will not be prescribed by artificial political boundaries, but will extend to a geographical area with common problems capable of physical solution."[123]

If independent units are established, another interrogation is not permitted for a four-year period. If another interrogation results in the creation of a joint unit, all independent units will be abolished.

A joint planning unit may be established by a county and any or all the cities located therein. No city which declines inclusion in the joint unit may establish an independent unit (KRS 100.121). Two or more adjacent joint planning units may establish a regional planning unit (KRS 100.123). Agreements establishing joint or regional units must (1) be in writing; (2) set out the boundaries of the unit; and (3) set out the details for establishment and administration of the unit. The agreement shall be adopted by ordinance by all participating local governments. A copy of the agreement shall be filed with the county clerk in each county involved (KRS 100.127). In counties with a population of 300,000, the establishment of a joint planning unit is mandatory (KRS 100.137).

Regional planning councils are required to be formed in specified area development districts to act in an advisory capacity regarding planning matters in the district (KRS 147A.125).

Planning Commission. If a planning unit is established, a planning commission must be established. In counties with a population less than 300,000, the commission shall be composed of 5 to 20 members (KRS 100.133). In counties with a population of 300,000, the planning commission shall consist of ten members; the mayor of the largest city, or his designee, the county judge/executive, or his designee, three members appointed by the mayor of the largest city, three members appointed by the county judge/executive, the city director of public works, and the county road engineer (KRS 100.137). In a consolidated local government, appointments to the board shall be made by the mayor (KRS 100.137 & 100.141). Appointments shall be by the mayor or county judge/executive, as appropriate, subject to approval by the city legislative

body or fiscal court (KRS 100.141). Commissioners' terms shall be four years, except that the terms of elected officials shall be coextensive with their elected terms (KRS 100.143). Vacancies shall be filled in 60 days by the appropriate appointing authority, and if not in that time, by the planning commission (KRS 100.147). Commissioners may be removed by the appointing authority for reasons of "inefficiency, neglect of duty, malfeasance, or conflict of interest" (KRS 100.157). Commissioners shall take an oath (KRS 100.151). Members may be reimbursed for expenses incurred, and citizen members may receive compensation (KRS 100.153).

The planning commission shall elect a chairman and such other officers deemed necessary (KRS 100.161). Regular meetings shall be held, with a minimum of six per year. Special meetings may be called by the chairman (KRS 100.163). The commission shall adopt bylaws and keep records of its proceedings (KRS 100.167), and may employ staff (KRS 100.173).

A quorum of the planning commission shall equal a simple majority of the membership, except that a commission established pursuant to KRS 100.137 may specify in its planning agreement that a quorum shall consist of five members. A majority vote of those present shall decide all matters, except that a majority of the total membership shall be necessary for adoption or amendment of the bylaws, or for elements of the comprehensive plan, or regulations (KRS 100.171).

The legislative bodies of the member local governments may appropriate funds for the operation of the commission. The commission shall have an annual audit (KRS 100.177). A member local government may assign urban renewal, community development, or public housing powers or functions to the commission (KRS 100.177). Independently funded planning units are required to publish annual financial statements (KRS 100.177).

Comprehensive Plan. The planning commission is mandated to prepare a comprehensive plan, "which shall serve as a guide for public and private actions and decisions to assure the development of public and private property in the most appropriate relationships" (KRS 100.183). A comprehensive plan must be adopted before local government may exercise land use control. The plan at a minimum must contain four "elements":

(1) A statement of goals and objectives, which shall serve as a development guide;
(2) A land use plan;
(3) A transportation plan; and
(4) A community facilities plan.

In addition, the comprehensive plan may contain such additional elements as community renewal, regional impact, historic preservation, housing, flood control, pollution, conservation, or natural resources (KRS 100.187). The preparation of the plan must be based upon research and analysis of population, economic conditions, community needs, including the identification and mapping of agricultural lands of statewide importance, and other significant factors (KRS 100.191).

The comprehensive plan may be adopted as a whole or the elements may be adopted singly (KRS 100.197), but the statement of objectives and principles shall be adopted first, to serve as a guide for preparing the other elements. Each member of a planning unit may develop goals and objectives for its jurisdiction that the planning commission shall consider when preparing or amending the comprehensive plan. The plan or its elements may be adopted only after a public hearing. Prior notice of enactment or amendment of the plan and copies of such enactment must be sent to specified public officials in adjacent cities and counties (KRS 100.193 and 100.197). The statement shall be presented to the member local governments for their

adoption (KRS 100.193). The elements of the plan shall be reviewed at least every five years (KRS 100.197).

Zoning Ordinances. When the planning commission and the legislative bodies of the local governments have adopted the statement of goals and objectives, and the planning commission also has adopted at least the land use element, the various legislative bodies may enact temporary zoning or other growth management regulations. After all elements of the comprehensive plan have been properly adopted, member legislative bodies may enact permanent land use regulations which divide the jurisdiction into zones in order to promote public health, safety, morals, and general welfare of the planning unit, to facilitate orderly and harmonious development and preserve the visual or historical character of the unit, and to regulate the density of population and intensity of land use in order to provide for adequate light and air. Zoning may also be used for the following:

(1) to provide for vehicle parking and loading space;
(2) to facilitate fire and police protection;
(3) to prevent the overcrowding of land, blight, danger;
(4) to prevent congestion in the circulation of people and commodities;
(5) to prevent loss of life, health, or property from fire, flood or other dangers;
(6) to protect airports, highways, and other transportation facilities;
(7) to protect public facilities, including schools and public grounds, historical districts, central business districts, and urban residential zones, which are defined in the cited statute;
(8) to protect natural resources;
(9) to regulate sludge disposal; and
(10) to protect specific areas of the planning unit which need special protection (KRS 100.201).

Cellular phone utilities seeking to build cellular phone towers in cities of the first class or consolidated local governments must seek approval of the appropriate planning unit (KRS 100.324). The utility must also seek approval from the Public Service Commission (KRS 278.650).

Zoning regulations shall be prepared by the planning commission, consisting of both a text and a map. The text shall list the types of zones that may be used and the regulations that may be imposed in each zone. Regulations must be uniform throughout a zone. The text shall also make provisions for granting variances and conditional use permits, for nonconforming use of land and structures, and for any other provisions necessary to implement these regulations. Additional textual requirements are given in KRS 100.203. The map shall show the boundaries of the area to be zoned and the boundaries of each zone. After proper notification is given, at least one public hearing shall be held by the commission (KRS 100.203 and 100.207).

The planning commission shall submit a copy of the regulations and a recommendation to member legislative bodies for adoption. A majority of an entire legislative body is required for passage of the ordinance adopting these regulations (KRS 100.207). Land use in cities of the fifth and sixth class in counties containing a city of the first class is controlled by the fiscal court (KRS 100.137). In a consolidated local government, land use is controlled by the metro council.

Amendments to the zoning map may be proposed by the commission, any legislative body or fiscal court in the unit, or the owner of the property in question. Any such proposal shall be referred to the commission and at least one public hearing shall be held after proper public notification is made. Findings of fact, including a summary of the evidence presented for and

against the proposal, and a recommendation shall be given by the commission to the legislative bodies involved. The commission's recommendation shall become final and effective unless a majority of an entire legislative body votes to override it. When no recommendation is made due to a tie vote of the commission, the same majority of a legislative body is required for adoption (KRS 100.211). KRS 100.2111 authorizes an alternate method that cities may adopt.

Amendments to zoning maps may be approved only if in conformity with the comprehensive plan or if it is found that: (1) the existing zoning classification was inappropriate and the proposed classification is appropriate; or (2) there have been unanticipated major changes in the nature of the area that have substantially altered the basic character of the area. A hearing on the amendment must be conducted by the commission. Reconsideration of a denied amendment may be prohibited for a period of two years by the commission or the local government (KRS 100.213).

Amendments to the text of any zoning regulation shall also be referred to the planning commission. Notice shall be made and at least one public hearing held before the commission shall give its recommendation and the reasons for such. A majority vote of any legislative body involved is necessary for adoption (KRS 100.211).

Specific notification requirements for zoning map or text amendments are given in KRS 100.211, 100.212, and 100.214.

Local governments may enact zoning ordinances which establish compatibility standards for the placement of manufactured housing in residential areas.

Boards of Adjustment. One last step must be taken before the zoning regulations may take effect: the legislative body must establish one or more boards of adjustment. Such boards shall be composed of 3, 5 or 7 members appointed by the mayor with the approval of the legislative body (KRS 100.217). Meetings of a board shall be at the call of the chairman (KRS 100.221). Additional requirements and procedures are set out in KRS 100.223 through 100.261.

The purpose of a board of adjustment is to grant relief from the literal enforcement of the zoning ordinance. Two forms of relief are permitted. The board may grant a conditional use permit, subjecting it to reasonable requirements (KRS 100.237), or it may grant a variance, permitting a property owner to depart from dimensional requirements (KRS 100.241).

The board also may permit the enlargement or extension of a nonconforming use which had existed at the time the zoning ordinance was enacted. Except in counties containing cities of the first class, cities of second class, consolidated local government, or urban-county governments, any use which has been a nonconforming use for ten years shall be deemed approved as a valid nonconforming use (KRS 100.253). The board may also review the decisions of administrative officials (KRS 100.257).

A certificate of land use restriction must be filed for any land use restriction authorized by any planning commission board of adjustment or legislative body authorizing such restriction. Such records shall be maintained by the county clerk (KRS 100.3681-100.3684).

The local government, in addition to establishing a board of adjustment, shall designate an official to administer the zoning regulations. This official may also be delegated the administrator of housing or building regulations (KRS 100.271).

Subdivision Regulations. Any planning commission which has adopted the objectives, land use plan, transportation plan and community facilities plan elements of the comprehensive plan may adopt regulations for the subdivision of land within the planning unit, except that in urban-counties, the commission shall make recommendations to the legislative body as to the regulations, and such recommendations may be overridden by a majority vote of the whole body

(KRS 100.273). Any independent city planning unit or joint unit which does not include the county may also regulate the subdivision of land outside the city but within the county, for five miles from the city boundaries, with the approval of the fiscal court. The planning commission may enforce other regulations extraterritorially with the approval of the fiscal court (KRS 100.131). If the planning commission adopts subdivision regulations, no person may subdivide any land without first having the plat approved by the planning commission (KRS 100.277). A legislative body must automatically accept streets or public grounds which have been dedicated and built in accordance with subdivision regulations or ordinances (KRS 100.277). "Subdivision" is defined as the division of a parcel of land into three or more lots or parcels except in a county containing a city of the first, second or third class, consolidated local government, or in an urban-county government where a subdivision means the division of a parcel of land into two or more lots or parcels; for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural use and not involving a new street shall not be deemed a subdivision. The term includes re-subdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than one acre occurring within twelve months following a division of the same land shall be deemed a subdivision within the meaning of this section (KRS 100.111).

Official Map. When all elements of the comprehensive plan have been adopted, the planning commission and the local governments within the unit may adopt an official map of all public ways, parks and recreational facilities and other public facilities (KRS 100.293). Such a map permits the city to reserve land for future streets and public facilities. No structure may be erected within the lines of a designated street or public facility without securing a building permit (KRS 100.303).

No comprehensive plan, zoning ordinance, subdivision regulation, public improvements program, or official map regulation shall be invalidated in its entirety by a court for failure to strictly comply with any procedural provision or publication requirement, unless the court finds that such failure "results in material prejudice to the substantive rights of an adversely affected person and such rights cannot be adequately secured by any remedy other than" invalidation (KRS 100.182).

Subdivision regulations may be enacted by a county which has not formed a planning unit pursuant to KRS Chapter 100. Such regulations shall be governed by the appropriate provisions of Chapter 100 (KRS 100.273).

Transferable Development Rights. In order to encourage the orderly growth of developing urban and rural areas, local governments are permitted to establish by ordinance a transferable development rights program which would protect "greenspace" or farmland while permitting growth for development purposes (KRS 100.208).

Residential Care Facilities for the Handicapped. Any private or governmental agency may operate a residential care facility in any residential district, zone or subdivision subject only to compliance to limitations required of other residences in the same area (KRS 100.982 and 100.984).

Nuisance Abatement

Municipal property owners are prohibited from allowing a structure to become unfit or unsafe. Cities are permitted to establish, by ordinance, procedures for the abatement of such nuisances. Such procedures may include reasonable standards and procedures for enforcement.

Nuisance abatement costs are the personal liability of the property owner. A city may bring civil action against the owner to recover such costs. (KRS 381.770).

If a city does not take action on thistle eradication, the Kentucky Commissioner of Agriculture may order the removal of thistles which are threatening the property of other landowners. The landowner must have a 15 day notice prior to such action, may be fined and is liable for reasonable removal costs (KRS 249.190).

Cities of the first and second class may enact a nuisance code and impose penalties for violation of the nuisance code. The ordinance or ordinances that form the code shall:

(1) Establish the acts, actions, behaviors, or conditions that constitute violations;
(2) Establish reasonable standards and procedures for the enforcement of the nuisance code;
(3) Provide for the establishment of a hearing board and hearing officers and the procedures to be followed by the hearing board and hearing officers;
(4) Delegate responsibility for enforcement of the nuisance code to an agency or department of the local government; and
(5) Establish penalties for violations of the code.

Notice shall be given to those who violate the code, informing them of the nature of their violation, the penalties for violation, the procedures for responding to the notice, and the fact that the determination shall be final unless it is contested before the hearing board (KRS 82.700-82.725).

Parking Citation Enforcement

Cities of the first four classes, consolidated local governments, and urban-counties may elect, by ordinance, to enforce parking regulations as civil violations instead of as criminal violations. A city electing to enforce parking violations by civil law must establish a hearing board so that persons cited for violations may contest the citation. Appeal from a determination by the hearing board shall be to district court.

The Act also establishes a procedure for the impoundment of motor vehicles parked in an illegal manner. A person whose vehicle is impounded may request a hearing contesting the impoundment. Impounded vehicles which are deemed to be abandoned shall escheat to the city. Escheated vehicles may be used by the city, scrapped, or sold at public auction. Vehicles are determined to be abandoned when after 45 days and notice by certified mail, the registered owner of the vehicle has failed to request a hearing or pay the related fines (KRS 82.600-82.640).

Private Investigators

02 SB 139 specifically prohibits local governments from regulating private investigators.

Rent Regulation

Cities are prohibited from controlling rents on private property (KRS 65.875).

Septic Tank Regulation

The Cabinet for Health Services regulates the construction of on-site sewage disposal systems (septic tanks). No such system may be installed except by persons certified to install such systems (KRS 211.350).

Any local board of health may request to act as the agent of the cabinet for the purpose of issuing on-site sewage disposal systems. The board may issue regulations relating to on-site

sewage systems and may impose reasonable fees. In counties containing a city of the first class, consolidated local government, and urban-counties, the board of health may adopt regulations more stringent than the state regulations (KRS 211.370).

Taxicabs and Limousines

Any city of the first five classes shall have the right to license and supervise the operation of taxicabs and supervise the conduct of taxi drivers within the city (KRS 281.635).

Any city is authorized to impose an annual license on all certified taxicabs and limousines operating within the city. The license tax shall not exceed $30 per taxi or limousine (KRS 186.281).

Trucks

Any city may, by ordinance, impose license fees on motor trucks, truck tractors, semitrailers and trailers, and may require registration plates to be attached thereto in a conspicuous place (KRS 186.270). For any truck licensed by a city, the provisions of KRS 189.221, 189.221(1), and 189.490 relating to height, width, length, and weight limits shall not apply within the city or within 15 miles of a city of the first four classes or five miles of a city of the fifth or sixth class, except on state maintained roads designated by the state commissioner of highways (KRS 189.280).

Underground Petroleum Storage Tanks

Any city which maintains underground petroleum storage tanks must meet the federal and state standards of assurance in cases of tank leakage (KRS 224.60-110 to 224.60-160).

Uniform State Building Code

The state Board of Housing, Buildings and Construction promulgated the state building code, which is administered by the state Department of Housing, Buildings and Construction (HBC). The Code establishes standards for the construction of all new buildings. The principal exclusions from coverage are single-family residences and farm buildings not located within a city [KRS 198B.010(4)]. A local government, however, may elect to extend coverage to single-family residences [KRS 198B.010(5)].

Local enforcement of the Building Code (KBC) shall be the responsibility of local governments. Each local government shall employ a building inspector to enforce the KBC within its jurisdiction. The local government may not enact any ordinance which conflicts with the KBC. Local governments are responsible for examination and approval of plans of buildings less than three stories in height, containing less than 20,000 square feet of floor space, and not intended for educational, assembly, industrial or high-hazard occupancy, or business or industrial occupancy in excess of 100 persons. They are also responsible for churches that meet certain specifications and buildings designed for use as frozen food storage locker plants. The Department of Housing, Buildings and Construction is responsible for other buildings (KRS 198B.060). The building code is set out in Title 815, Chapter 7 of the Kentucky Administrative Regulations.

Local governments, in cooperation with HBC, may locally administer the electrical contractors standardized licensure examination, which may be locally required for electrical contractors. 1994 legislation amends KRS 227.490 to delete the exemption from local

examination of those electrical contractors and electricians with five years experience, and in lieu thereof now exempts those who hold a current Kentucky license. (KRS 227.490).

Police and Fire Departments

KRS Chapter 95 provides a comprehensive scheme of legislation for the establishment and operation of municipal police and fire departments. Cities of the second and third class and urban-county governments are required to establish police and fire departments (KRS 95.440, as interpreted by OAG 78-90). But some newly reclassified cities are questioning this interpretation and no clear-cut policy is evident on this issue. The establishment of police and fire departments in other classes of cities is permissive, although the establishment and operation of the departments must be pursuant to the applicable provisions of KRS Chapter 95.

Senate Bill 4, enacted during the 1994 Session, creates a new section of KRS Chapter 95 to grant police in cities of the first through fifth class county-wide jurisdiction and to limit the authority of police in cities of the sixth class to the corporate boundaries of the city or real property owned by the city.

Appointment

In all classes of cities operating under the mayor-council plan, police officers shall be appointed and removed solely at the pleasure of the mayor, except as otherwise provided by statute, ordinance or contract (KRS 83A.130). Firefighters shall be appointed and removed in the same fashion. In cities operating under the other forms of government, police officers and firefighters shall be appointed and removed by the city legislative body.

The principal statutory limitations on the appointment of firefighters and police officers are civil service systems. Civil service systems are discussed in Chapter VII.

Discipline and Removal

Cities of the First Class. All positions in the fire department and police department shall be under the jurisdiction of the classified service, except for the chiefs, the assistant chiefs and the chief of detectives (KRS 90.150).

The grounds for dismissal of a police officer or firefighter are to be established by regulation promulgated by the civil service board (KRS 90.160). Any employee who is dismissed, demoted, or suspended in excess of ten days by the appointing authority may appeal the disciplinary action to the civil service board. The employee shall have a public hearing before the board and may be represented by counsel and may introduce evidence. The employee may appeal the decision of the board to the Circuit Court within thirty days of the board's order (KRS 90.190).

Cities of the Second and Third Classes. Cities of the second and third classes may establish a civil service system covering the police and fire departments pursuant to KRS 90.300-90.420. If a civil service is not established, KRS 95.450 shall control disciplinary actions against members of such departments.

A. Non-civil Service. Police officers and firefighters in cities of the second or third classes which have not established a civil service system may be disciplined only for the reasons of inefficiency, misconduct, insubordination, or violation of law or rules adopted by the legislative body of the city. Discipline includes reprimands,

dismissals, suspensions, or reductions in pay. Unlike the procedure in cities of the first class, the disciplinary action cannot be taken until after the employee has had a public hearing. The hearing is before the city legislative body. The following procedure for disciplining a police officer or firefighter must be followed (KRS 95.450).

Step 1. Charges are filed against the employee with the city clerk. Charges shall be in writing and shall be set out clearly.
Step 2.. Two days before the hearing, a copy of the charges and the scheduled date of the hearing shall be served on the employee.
Step 3. Within three days of the filing of charges, a public hearing shall be conducted by the legislative body.

An employee may be suspended pending the hearing. Witnesses may be subpoenaed for the hearing.

The legislative body is limited in fixing punishment to reprimand, suspension not in excess of six months, reduction in grade, or dismissal. The officer may appeal the punishment to the Circuit Court (KRS 95.460).

B. Civil Service. No member of a police or fire department in the classified service shall be dismissed, suspended or reduced in grade or pay unless, after the procedure set out in KRS 90.360 is followed, he is found guilty of inefficiency, misconduct, insubordination, or violation of law involving moral turpitude. Additional grounds for discipline are set out for cities of the third class: violation of any rule adopted by the city legislative body or civil service commission.

The procedure is as follows:

Step 1. Written charges are filed with the mayor, who shall communicate such charges to the civil service commission.
Step 2. The mayor makes a determination of whether probable cause exists for the charges.
Step 3. If probable cause exists, the mayor prefers charges against the employee and notifies the civil service commission.
Step 4. The civil service commission serves a copy of the charges on the employee.
Step 5. A hearing is held on charges before the civil service commission not sooner than three days after a copy of the charges has been filed on the employee. The employee may waive service of charges and demand a hearing within three days after the charges are filed with the commission.

An employee may be suspended from duty or pay, or both, pending the hearing. The commission may impose the following discipline if it determines the charges are true: reprimand, suspension not to exceed six months, reduction in grade, or dismissal. An employee may appeal to the Circuit Court, where the action shall be tried as an original action.

Cities of the Fourth and Fifth Classes. A police force or fire department may be established by cities of the fourth and fifth classes. Such a city may establish a civil service system under either KRS 95.761 *et seq.,* or KRS 90.300-90.390. If the city does not establish a civil service system, police officers and firefighters shall be treated the same as other city employees.[124]

Civil Service. Police officers and firefighters in cities of the fourth and fifth classes covered by civil service pursuant to KRS 95.761 may be dismissed or reduced in grade only or reasons of inefficiency, misconduct, insubordination or violation of law or rules adopted by the department. Such disciplinary action may be instituted only after a public hearing before the city legislative body has been conducted. KRS 95.765 details the procedure which must be followed.

Step 1. A charge shall be filed against the employee. The charge shall be in writing and set out with clearness and distinctness each and every charge. The charge shall be filed with the mayor, who shall immediately notify the legislative body.
Step 2. Two days prior to the hearing the employee shall be served with a copy of the charges.
Step 3. Within three days of the filing of the charges, the legislative body shall conduct a public hearing on the charges.

The employee may be suspended from pay or duty, or both, pending the hearing. Witnesses may be subpoenaed. The legislative body may impose the following punishments: reprimand, suspension not in excess of six months, reduction in grade, or dismissal. The employee may appeal the decision of the board to the circuit court (KRS 95.766).

Urban-County Government. KRS 95.450, discussed above, relative to cities of the second and third class, applies to urban-county governments. 1996 legislation increased the number of eligible persons for service from three to five and removed the requirement of residency in the urban-county for veterans who are eligible for bonuses on the exam (KRS 67A.240).

Consolidated Local Government. Legislation enacted in 2000 provides for the establishment of police merit boards in a consolidated local government. Such boards regulate the employment of police officers by the creation and operation of a merit system and establishment of a disciplinary system.

The Police Officers' Bill of Rights. The 1980 General Assembly enacted HB 416, popularly known as the "Police Officers' Bill of Rights," codified as KRS 15.520. The bill gives "due process" protection to all police officers employed by police departments which participate in the Kentucky Law Enforcement Foundation Program Fund. That program, established by KRS 15.410-15.510, pays police officers, in participating jurisdictions, an annual compensation bonus if they have completed a minimum level of training and continue to attend additional training.

KRS 15.520 was intended to "establish a minimum system of professional conduct" for police officers. Its provisions were designed to supplement, not supersede, the existing provisions relating to police discipline. KRS 15.520 states that the following rights must be afforded any officer against whom a complaint alleging misconduct has been filed:

(1) Complaints shall be in the form of sworn or unsworn affidavits. Unsworn affidavits must be verified by an independent source of information;
(2) No threats, promises or coercion may be used against the officer. Prior to or within 24 hours after suspension, an officer must be advised in writing of the reasons for the suspension;
(3) The officer may not be interrogated until 48 hours after the written request for questioning (however, he may be required to submit a written report of the incident no later than his next tour of duty after the department has become aware of the charges). The interrogation shall be conducted while the officer is on duty;

(4) If the officer is under arrest, likely to be arrested or a suspect in a criminal investigation, he shall be afforded the same constitutional rights as any civilian;
(5) If the complaint results in a charge filed against the officer, the charge shall be in writing with "sufficient specificity as to fully inform" him as to the nature of the charges;
(6) No public statements concerning the charges shall be made by any person of the local government or the police officer while the charges are pending;
(7) An officer may not be required to speak or testify before "any person or body of a non-governmental nature"; and
(8) The department may investigate and charge officers both criminally and administratively.

In addition to the above rights, the "Police Officers' Bill of Rights" sets out a procedure for the conduct of hearings when "a hearing is to be conducted by any appointing authority, legislative body or other body as designated by the KRS." At the hearing, the officer charged must be afforded the following minimum rights:

(1) He must receive 72 hours notice of the hearing;
(2) He must receive copies of all statements and affidavits to be considered no later than 24 hours before the hearing;
(3) The hearing must be held within 60 days of the charge being filed;
(4) The charge against the officer will be dismissed with prejudice if the complaining witness does not appear at the hearing;
(5) He shall have the right to be represented by counsel;
(6) He shall be able to subpoena witnesses or evidence on his behalf;
(7) He shall be allowed to call witnesses, present evidence and cross-examine hostile witnesses;
(8) He may appeal an adverse decision of the hearing body to Circuit Court, where it will be tried as an original action; and
(9) The failure of an officer to receive the aforementioned rights or the failure to follow the hearing provisions may be raised with the hearing authority. The hearing authority must consider whether the officer has been materially prejudiced by the failure to follow such procedures. They should not exclude proffered evidence solely because of procedural problems, unless the weight or credibility of the evidence is affected.

Any officer suspended pending investigation of the charges against him who is not given such a hearing within 60 days shall have the charges dismissed and be reinstated with full back pay and benefits.

KRS 15.520 provides only procedural rights to police officers, in that it is applicable to disciplinary actions only if the officer has a right to a hearing under some other statute. This interpretation was made by the Kentucky Court of Appeals in *McCloud v. Whitt*.[125] The cause of action arose out of the Mayor of Worthington's dismissal of the police chief, Bernard McCloud. The mayor dismissed McCloud not for disciplinary reasons, but for no stated reason, under his authority to remove an officer at will. No hearing was afforded McCloud.

McCloud brought the action against the mayor, alleging that the dismissal was wrongful because the procedure set out in KRS 15.520 had not been followed. He acknowledged that the mayor had statutory authority to remove officers at will, but pointed out that the statute contained the exception "except as tenure and terms of employment are protected by statute, ordinance or

contract." McCloud argued that KRS 15.520 was such a protecting statute, limiting the mayor's right to remove. In support, he cited an unpublished Attorney General's opinion which read:

> it is apparent under the terms of this statute that a police officer cannot be removed without the right to have a hearing under the procedure set forth in the statute which means that the mayor's general power to remove minor city officers without cause or without the officer having the right to be heard would be nullified by this statutory exception.[126]

The Circuit Court agreed with McCloud and the mayor appealed. The Court of Appeals reversed, stating that "KRS 15.520 has no application to the removal of Police Chief Whitt," because the chief's "removal was not predicated upon any complaint of professional misconduct...or upon any charge involving violation of any local unit of government's rule or regulation...but resulted from action by the mayor under the discretionary power given him."[127] The court went on to say that "it would be absurd to require a hearing where, as here, there has been a removal under authority to remove at will rather than a removal for some cause, since there would be nothing to inquire into."[128] In other words, KRS 15.520 provides procedural rights, not substantive rights.[129]

Miscellaneous Statutes Relating to Police and Fire Departments

All Cities. All police officers and auxiliary police officers originally appointed after July 14, 1992, shall be at least 21 years old and have graduated from high school or have received a G.E.D. or a high school diploma through an external diploma program (KRS 95.951).

The legislative body of any city may authorize the employment of a property clerk and deputy property clerks who are to be appointed by the city's executive authority (KRS 95.845).

Cities of the First Class. The chief of police and members of the police department shall possess all powers of constables except for the service of civil process (KRS 95.019).

Each police officer shall take a written oath to "faithfully discharge the duties of his office" (KRS 95.200).

Police officers and firefighters shall be exempt from arrest on civil process and service with subpoenas from civil courts while on duty (KRS 95.210 and 95.270).

The fire department of the city shall be organized on a three-platoon system, with each platoon being on duty for twenty-four hours and off duty for forty-eight hours (KRS 95.275).

Cities of the Second and Third Class and Urban-Counties. In cities of the second and third class and urban-county governments, while police officers and firefighters are appointed by the executive authority, the legislative body shall require that all applicants for the departments be "examined as to their qualifications for office, including their knowledge of the English language and the law and rules governing the duties of the position applied for." Members of the departments shall hold their positions for "good behavior" (KRS 95.440).

A. Police. In cities of the second class the chief of police or a police officer serving under him shall:

(1) attend all sessions of the legislative body, execute their orders, and preserve order at the session;

(2) receive the same fees as sheriffs for similar services (KRS 83A.070 requires all fees to be paid into the city treasury);

(3) execute process (KRS 95.480).

Each police officer in a city of the second class shall take a written oath to faithfully discharge the duties of the office, and shall give bond in an amount to be fixed by ordinance (KRS 95.490). Except where patrolmen are employed and paid by the day, members of police departments in cities of the third class shall not be required to work more than eight hours a day or five days a week, except in cases of emergency, and they shall receive an annual leave of fifteen days (KRS 95.497). Police in cities of the second class, along with their urban-county counterparts, may, under certain conditions, work ten-hour, four-day shifts (KRS 95.495).

Police officers in cities of the second class may make arrests anywhere within their county (KRS 95.019).

In cities of the third class, police officers shall have the same powers as peace officers to make arrests, execute process and enforce the laws anywhere in their county (KRS 95.510).

B. Firefighters. The chief of the fire department in cities of the second class or urban-county governments shall:

(1) either send an officer acting under his authority or personally be present at all fires and examine their causes;
(2) "direct and control the operations of the members of the fire department";
(3) have the right to examine fire plugs, cisterns, etc.;
(4) have control over all buildings and equipment furnished the department; and
(5) perform such other duties as prescribed by ordinance (KRS 95.500).

The fire departments in cities of the second class and urban-county governments shall be organized on a three-platoon basis, where each platoon is on duty for twenty-four hours, then off duty for forty-eight hours. All employees of the fire department shall be given not less than two weeks leave of absence annually with full pay (KRS 95.500). In cities of the third class, the fire department shall be organized on a two-platoon basis, with each platoon on duty for 24 hours and off duty for 24 hours. The legislative body may provide an additional 24-hour off-duty period every 14 days (KRS 95.505).

Cities of the Fourth and Fifth Class. In order to be eligible for appointment as a police officer or firefighter in a city of the fourth or fifth class, except for cities which have adopted civil service, a person shall:

(1) be able to read and write the "English language intelligently";
(2) be "moral, sober and sagacious";
(3) not have been convicted of a felony; and
(4) be at least 21 years old to be a police officer, and at least 18 years old to be a firefighter (KRS 95.710).

A. Police. The chief and members of the police department in cities of the fourth and fifth class may make arrests anywhere within their county (KRS 95.019).

Except in cities of the fourth class which have adopted the civil service system, all police officers shall take an oath to faithfully perform their duties, and in cities of the fourth class, also an oath not to interfere in any election (KRS 95.760).

B. Firefighters. In cities of the fourth class, firefighters shall be on a two-platoon system, where each platoon is on duty for twenty-four hours and off duty for twenty-four hours; the legislative body may permit an additional twenty-four hour off-duty period each fourteen days (KRS 95.715).

Any city of the fourth or fifth class which has established a regular police or fire department may establish a civil service system for such departments (KRS 95.761).

Cities of the Sixth Class. Unlike the other classes of cities, there are no specific statutes relating to police and fire departments in cities of the sixth class. However, since there are no statutes prohibiting the establishment of such departments in cities of the sixth class, the legislative body of a city of the sixth class may establish a police or fire department by ordinance, pursuant to the home rule authority of KRS 82.082. SB 4, enacted by the 1994 General Assembly, does limit the authority of police in cities of the sixth class to the corporate boundaries of the city or real property owned by the city (KRS Ch. 95).

Assistance to Other Jurisdictions

Any local government police officer, except for constables, special local peace officers and special deputy sheriffs, may assist another law enforcement agency in Kentucky. When his assistance is requested such an officer shall have the same arrest powers he has in his home jurisdiction. The Act applies only to police departments which meet the requirements of KRS 15.440. Assistance may not be authorized for labor disputes or strikes (KRS 431.007).

Any local law enforcement agency, if it requests, may receive the assistance of the Cabinet for Human Resources for aid in non-custodial child abuse investigations (KRS 620.040).

Arrest Powers

02 HB 428 permits peace officers to make arrests without a warrant if there is probable cause to believe a violation of a restraining order has or is about to occur.

Auxiliary Police

Any city of the second, third or fourth class or urban-county government or any city of the fifth or sixth class not located in a county containing a city of the first class may by ordinance establish an auxiliary police force. The ordinance shall set out the number of officers, their manner of appointment, and rules and regulations governing their powers and duties (KRS 95.445). Such officers shall possess the same powers as regular police officers unless their powers are expressly limited by ordinance or statute (OAG 78-675). Auxiliary police are defined as "special law enforcement officers." Such an officer is defined as one whose duties include:

(1) the protection of specific public property;
(2) control of the operation, speed and parking of motor vehicles; and
(3) answering intrusion alarms on specific public property (KRS 61.900).

Citation and Safety Officers

The legislative body of any city may authorize the employment of citation and safety officers. Citation officers may issue citations for nonmoving motor vehicle offenses and violations of ordinances that do not constitute a violation of the Kentucky Penal Code.

The powers allowed safety officers are broader than those of citation officers. They include:

(1) issuing citations for nonmoving motor vehicle offenses provided for in KRS Chapters 186 and 189;

(2) issuing citations for the violation of any motor vehicle or traffic safety ordinance enacted by the city;

(3) controlling and directing traffic on public thoroughfares;

(4) removing vehicles in violation of state or local laws; and

(5) issuing citations for misdemeanors committed in the officer's presence.

Safety officers are required to successfully complete 120 hours of appropriate training prior to being appointed. Neither citation nor safety officers have the powers of peace officers to make arrests or carry deadly weapons (KRS 83A.087 and 83A.088).

1994 legislation amends KRS 83A.088 to allow all city citation officers to issue violations of KRS 186.430, 186.450, 186.510, and 186.540 which relate to motor vehicle licenses.

Collective Bargaining for Firefighters

In cities of the 1st class or a consolidated local government, firefighters shall be given the right to collectively bargain with the city. Any other city may petition the commissioner of the Department of Workplace Standards under the direction of the secretary of the Labor Cabinet to permit the city to enter into collective bargaining agreements with its firefighters (KRS 345.010 and 345.030).

Equipment

02 HB 293 established a thermal vision grant program for fire departments. Regulation and administration of the program is by the Fire Standards Safety Commission under the State Fire Marshall's Office.

Insurance Benefits

02 HB 519 establishes a monthly payment of $200 each for health and life insurance premiums for firefighters who are permanently disabled in the line of duty (KRS Chapter 95A).

Kentucky Law Enforcement Foundation Program

Any city which employs a paid police force may participate in the Kentucky Law Enforcement Foundation Program Fund. The city must conform to the minimum requirements of KRS 15.440. If the city qualifies, the fund will annually pay each police officer who attends the minimum number of training courses a supplemental compensation of $3,000 (KRS 15.460).

Law Enforcement Telecommunicators

No person may be employed by a local police department as a telecommunicator unless certified as qualified by the Secretary of Justice. The requirement applies to all persons employed as telecommunicators after July 15, 1986. All telecommunicators must annually complete eight hours of in-service training to retain this certification.

A "telecommunicator" is defined as "any full-time employee...whose primary responsibility is to dispatch law enforcement units by means of radio communications for an agency which is part of or administered by the state or any political subdivision" (KRS 15.530-15.590).

Merger of Fire Departments

02 SB 66 establishes a procedure for the merger of volunteer fire departments and the method for the awarding of state grant money to merged departments (KRS Chapter 95A.)

Police Vehicles

Any city, by ordinance, may authorize its police department to equip its vehicles with a combination of red and blue lights (KRS 189.920).

All marked police vehicles used to transport prisoners must be equipped with a screen or other protective device between the front and rear seats, and the area in which the prisoners are enclosed must be equipped so that the doors and windows cannot be opened from the inside (KRS 61.387).

All law enforcement officials may cite violations of the open burning laws and issue citations in lieu of arrest (KRS 149.093).

Professional Firefighters Foundation Program Fund

Similar to KLEFPF, the Professional Firefighters Foundation Program Fund is available to any city which employs a paid fire department and meets the minimal requirements of KRS 95A.230. The fund is administered by the Commission on Fire Protection and pays an annual $3,000 supplement to each firefighter in a qualifying city who attends the requisite number of training programs (KRS 95A.250). The 2000 General Assembly increased to $8,250 the annual aid to volunteer fire departments. There is also a revolving low-interest loan fund to finance equipment and facilities for these departments. Funds equal to the employer's contribution to each qualified member are put into either the deferred benefit pension plan or a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954.

Public Intoxication

Any local law enforcement officer who seeks to enforce alcohol intoxication or "drinking in a public place" laws has the option whether or not to arrest an individual. If an arrest is not made, a citation may be issued and the violator may be taken to an ordinance designated facility for care (KRS 222.203).

Rescue Squads

The mayor of any city, county or urban-county may authorize the establishment of rescue squads. Such squads may operate in conjunction with the fire department or as separate units. A rescue squad shall consist of at least twelve members and shall have at least one vehicle (KRS 39.700-39.770).

Rights of Police and Firefighters

Members of police and fire departments shall abide by all laws enacted by the General Assembly and all rules promulgated by the legislative body, except that such regulations may not restrain the officers, while off duty, from exercising the rights and privileges enjoyed by the other citizens of the city (KRS 95.015). KRS 95.017 further elaborates on those rights and privileges, and permits "uniformed employees" to perform various political acts while off duty and out of uniform.

Training Requirements

The 1992 General Assembly enacted SB 269 to help ensure that peace officers receive the necessary training to successfully carry out their work. All police officers or auxiliary police officers originally appointed after July 14, 1992, shall successfully complete 400 hours of basic training within one year of appointment or employment. All police officers or auxiliary police officers, regardless of the time of their appointment or employment, shall successfully complete 40 hours of annual in-service training. All training programs must be administered or approved by the Department of Criminal Justice Training.

Failure to complete the required training within the specified time period rescinds an officer's authority to carry deadly weapons and make arrests and subjects an officer to possible dismissal. A 180-day extension may be granted to an officer who is prevented from completing the required training due to specified extenuating circumstances; this extension would begin after the officer returns to duty.

Cities or urban-counties with regular police departments that have ten or fewer officers may be reimbursed for the base salary of each full-time police officer while that officer is fulfilling the annual in-service training. Consult the Department of Criminal Justice Training for details relating to this provision (KRS Chapter 15).

CHAPTER IX

URBAN-COUNTY, CHARTER COUNTY, AND CONSOLIDATED LOCAL GOVERNMENT

Urban-County

The voters in any county, except a county containing a city of the first class, may merge all existing units of city and county government into a single urban-county form of government pursuant to KRS 67A.010.

Adoption of Plan

KRS 67A.020 establishes the procedures that must be followed to initiate merger proceedings and to place the question of merger before the voters. The process of merging city and county governments begins when at least two separate petitions requesting a referendum be held on the question of adopting an urban-county form of government have been filed with the county clerk. The county is required to submit one petition and every incorporated city within the county is also required to submit a petition to the county clerk.

The petition filed by the county must be signed by a number of registered voters equal to five percent of the voters of the county that voted in the last general election. A petition filed by a city must be signed by a number of registered voters equal to five percent (5%) of the number of voters within that city that voted in the last general election. The requirement for separate petitions implies that only voters who live outside an incorporated area are eligible to sign the county petition and only voters who reside within the city limits may sign a petition filed by a city.

Once the petitions have been filed with the county clerk, the county fiscal court and the city council of the largest city within the county are required to appoint a representative commission composed of not less than twenty citizens. The representative commission must include, but is not limited to, the following provisions:

1. A description of the form and structure of the new urban-county government;
2. The officers, their functions, powers, and duties under the new government; and
3. The procedures by which the original plan may be amended.

The comprehensive plan is required to be advertised at least ninety days prior to the general election in November that the question of adopting the urban-county form of government is scheduled to be voted upon. The question shall be filed not later than the second Tuesday in August preceding the day of the next general election. If a majority of the votes cast at the election are in favor of adopting the plan, the county board of election commissioners is required to organize the new urban-county government.

Transition to Urban-County Plan

KRS 67A.030 provides that if the voters elect to adopt the urban-county plan, the new form of government shall not go into effect until the next regular election at which county officers are elected. (See also Section 99 of the Kentucky Constitution). Immediately upon the effective date of the new form of urban-county government all existing municipal offices shall be abolished. The constitutional county officers and such other elected officials as are provided in

the comprehensive plan shall be elected, and the urban-county plan shall immediately become the effective government.

Nature of Plan

KRS Chapter 67A is a home rule charter plan. There is no general "plan" of an urban-county government, since the citizens may create the structure determined to be best suited to the needs of their community. However, because Chapter 67A cannot supersede constitutional provisions, whatever plan is adopted must retain the county officers required by Section 99 of the Kentucky Constitution. The officers required in each county are: county judge/executive, county clerk, county attorney, sheriff, jailer, coroner, surveyor, assessor, and in each justice's district a justice of the peace and a constable.[130] The office of assessor may be abolished. All other officers, their duties, powers and relationships are required to be established and prescribed in the comprehensive plan.

Even though the comprehensive plan may call for the dissolution of incorporated municipalities and special districts within the county, KRS 67A.050 states that for "purposes of all state and federal licensing and regulatory laws, statutory entitlement, gifts, grants-in-aid, governmental loan or other governmental assistance under state or federal laws or regulations," the urban-county shall be deemed a county and shall be deemed to contain such municipalities (retaining number and class) as existed prior to adoption of the plan.

Powers of Government Under Plan

KRS 67A.060 provides that urban-county governments "may exercise the constitutional and statutory rights, powers, privileges, immunities and responsibilities of counties and cities of the highest class within the county." Those powers are further defined as those powers that:

(1) Are in effect on the date the urban-county became effective;
(2) Are subsequently adopted for counties and cities of that class; and
(3) Are authorized or imposed upon urban-counties.

The powers possessed by urban-counties pursuant to (1) and (2) above shall continue to be possessed by urban-counties even if the statutes upon which they are based are repealed or amended unless <u>expressly</u> repealed or amended with reference to urban-county governments (KRS 67A.060).

Enactment of Ordinances. To exercise the powers granted urban-counties, KRS 67A.070 authorizes the government, within its territorial limits, to "enact and enforce tax, licensing, police, sanitary and other ordinances not in conflict with the constitution and general statutes of this state...as they shall [be] deem[ed] requisite for the health, education, safety, welfare and convenience of the inhabitants...and for the effective administration of the urban-county" government. No ordinance enacted by the urban-county shall be deemed to conflict with the general law, unless:

(1) The ordinance authorizes that which is expressly prohibited by general statute, or
(2) There is a comprehensive scheme of legislation on the same subject in the general law.

No ordinance or resolution is permitted to be considered until it has been read at two separate meetings of the urban-county legislative body. The second reading may be waived by a two-thirds (2/3) vote of the members of the legislative body. The full text of the legislation need not be read and it is sufficient if the title and a certified synopsis prepared by an attorney is read. An ordinance shall be effective upon passage by the body unless timely vetoed by the chief

executive officer. The specific procedure for veto and legislative override must be set out in the comprehensive plan. All ordinances and resolutions shall be published in the daily newspaper that has the largest bona fide publication in the county and is published in the county. Ordinances or resolutions that impose fines, forfeitures, imprisonment, taxes or fees (other than bond ordinances) shall be published in full; all other ordinances and resolutions may be published in summary. Such summary must include the title of the measure and a certified synopsis of the contents prepared by an attorney.

Ordinances may adopt by reference the provisions of any local, statewide or nationally recognized standard or code, in the same manner as may cities (KRS 67A.070).

Taxing Powers. KRS 67A.850 grants urban-counties the right to impose ad valorem taxes. The section reads in its entirety as follows:

> Urban-county government may: exercise ad valorem property taxing powers pursuant to the Kentucky Constitution, Section 157, to the limits authorized therein for the class of city to which the largest city in the county belonged on the day prior to the date the urban-county government became effective. The taxing powers shall be exercised by the urban-county government consistent with the Kentucky Constitution, Section 172A, and KRS 132.010, 132.023 and 132.027. Provided, in no way will this section and KRS 67A.860 allow an urban-county government to increase the taxes of any district without the urban-county government having first performed its obligations to provide services for such increases.

For taxation purposes the city may be divided into service districts pursuant to KRS 67A.150. Each service district is considered a separate taxing district in which an ad valorem tax rate differential as authorized dependent upon the kind, type, level and character of services provided the residents of the various districts. The Kentucky Supreme Court ruled in *Jacobs v. Lexington-Fayette Urban-County Government* that such variable tax rates are permissible only with respect to real property.[131]

KRS 67A.860 requires property owners to be notified by certified mail if the urban-county intends to extend services in their service district that may result in a tax increase. A public hearing must be held on the question of extension of services.

Miscellaneous Provisions

Alcoholic Beverages. If an urban-county government is formed, the local option status of the county and each city of the first through fourth class shall remain unaffected unless changed by election. The territorial boundaries of all such cities in the newly formed urban-county shall survive for the purpose of local option elections (KRS 242.126).

Chief Administrative Officer. KRS 67A.025 authorizes urban-county governments to create the office of the chief administrative officer (CAO). If the office is established, the CAO serves on the staff of the chief executive officer "to provide professional assistance in the administration of an urban-county government." The CAO shall be appointed by the chief executive officer subject to approval by a three-fifths vote of the legislative body.

Removal procedures governing CAO's vary depending upon the date when the urban-county government was created. The chief administrative officer of any urban-county government created before December 31, 1987, may be removed with or without cause by either

an executive order of the chief executive officer or by a three-fifths vote of the entire legislative body.

The chief administrative officer of any urban county government created after December 31, 1987 may be removed by three-fifths vote of the entire legislative body. Upon removal, a CAO is not entitled to severance pay or notice of intention of removal.

A CAO may be a non-resident, although he must become a resident of the urban-county within six months of his appointment and maintain residence with the urban-county during his tenure. A chief administrative officer is required to "possess demonstrable educational or professional experience in the art and science of governmental management."

Citation Officers. KRS 67A.076 authorizes urban-county governments to appoint citation officers who do not have the powers of peace officers to arrest or carry weapons, but who may issue citations, as authorized by ordinance, upon the observation of non-moving motor vehicle offenses, violations of ordinances which are not moving motor vehicle offenses, and offenses which constitute violations of the Kentucky Penal Code.

Civil Service. KRS 67A.200 to 67A.310 governs civil service (or merit) systems for the employees of the urban-county government if such a system has been required by the comprehensive plan.

KRS 67A.230 authorizes the mayor, or other appointing authority as determined by the comprehensive plan, to appoint five persons to serve on the civil service commission. Appointments are subject to approval by the legislative body. Members of a civil service commission serve a four year term until their successors are appointed and qualified.

KRS 67A.240 establishes procedures that a civil service commission must follow in the examination, rating and certification of an eligible list of applicants for employment. 1996 legislation increased the number of eligible persons for service from three to five and removed the requirement of residency in the urban-county for veterans who are eligible for bonuses on the exam. KRS 67A.250 directs the civil service commission to examine all eligible applicants as to "their physical and mental qualifications for the particular classification wherein they seek employment," and certify candidates to the appointing authority.

KRS 67A.270 governs civil service appointments, promotions and reinstatement. Pursuant to KRS 67A.280, no employee in a civil service position, after a six-month probationary period, shall be dismissed or demoted except for reasons of inefficiency, misconduct, insubordination or violation of the law involving moral turpitude. An employee may request a hearing before the commission on any disciplinary action taken against him.

KRS 67A.310 prohibits employees from being appointed to a position because of political favors and protects employees from being fired because of personal political opinions. This statute also addresses other types of prohibited political activities.

Civil Service Pension Fund. If a municipal employee pension fund was in effect in any city which was merged into the urban-county, KRS 67A.320 requires the urban-county to continue to maintain the fund and to contribute monthly the sum necessary to maintain such fund in accordance with principles established by an actuarial study. In addition, employee contributions may be assessed, not to exceed nine percent of the monthly salary of each employee, unless a higher rate was charged prior to the merger of governments, in which case the higher rate may be charged.

The fund shall be controlled and managed by a board of trustees composed of the mayor, four members of the legislative body, the secretary of the Department of Finance, the director of

the Division of Personnel, and three civil service employees elected by those covered by the pension fund.

Enacted in 1988, KRS 67A.315 prohibits urban-county governments created after July 1988 from operating pension programs under KRS 67A.320 to 67A.340 and 67A.360 to 67A.390. Any urban-county created after July 1988 is required to maintain any pension system in effect in the county or city prior to merging governments. However, such a system may be closed to new members in favor of participating in the county employees retirement system (CERS). Employees in service on the date of the urban-county's participation in CERS must be given the option of joining CERS.

Code Enforcement Boards. Municipalities may adopt a code enforcement board by ordinance, according to 1996 House Bill 814, the Local Government Code Enforcement Board Act. This board is designed to issue remedial orders and impose civil fines as a method of enforcing the violation of an ordinance when the ordinance is classified as a civil offense. A code enforcement board is composed of either five or seven members. The initial appointments are staggered, with all subsequent appointments to be for three years. Members may succeed themselves and are appointed by the executive authority of the local government with approval by the local legislative body. The specific powers of the board are enumerated in KRS 65.8821. Violators of an ordinance are cited by a code enforcement officer (KRS 65.8825) and are allowed a hearing (KRS 65.8828). Appeals to the outcome of a hearing of the code enforcement board may be made in the district court of the county (KRS 65.8831). The entirety of the Local Government Code Enforcement Board Act is KRS 65.8801 to 65.8839.

Corrections. The offices of sheriffs and jailers in urban-counties and consolidated local governments may be consolidated and there may be a correctional services division established (KRS 67A.028 and 71.110).

HB 46 from the 1992 Regular Session amended KRS 439.179 and requires a gainfully employed prisoner to pay the cost of his board in jail. These fees, within certain limitations, shall be set by the urban-county.

Management Districts. A city of the first class or an urban-county government may create a management district in order to finance economic improvements within designated areas of the city. Such districts are created by ordinance and improvements are to be financed by assessments which are levied on and collected from all property owners within the district. Oversight of the district is performed by a board of directors and other statutory requirements (KRS 91.750-91.762).

Mass Transit. Mass transit authorities in urban-counties may include highway projects in their transit programs (KRS 96A.320). Sales taxes imposed for mass transit programs are limited to the period of time specified by the mass transit proposal, unless extended by referendum (KRS 96A.330).

Motor Vehicle Parking Authorities. KRS 67A.910 to 67A.928 governs the creation and operation of a motor vehicle parking authority in an urban-county. Pursuant to KRS 67A.914 an urban-county government may establish a parking authority for the purpose of enhancing economic development of the urban-county, especially downtown areas, by providing solutions to urban parking problems. KRS 67A.916 requires the authority to be governed by a five-member board of commissioners appointed by the mayor with the approval of the legislative body.

The authority may erect, purchase and maintain parking structures and issue bonds for the financing thereof. The board may also request the urban-county legislative body to establish a parking district and levy an ad valorem tax on the property therein pursuant to KRS 67A.924, or

an occupational license tax on businesses within the district pursuant to KRS 67A.926, for the amortization of bonds.

Police and Firefighters' Retirement and Benefit Fund. KRS 67A.360 to 67A.690 governs a police and firefighters' retirement fund in urban-counties.

Two pieces of legislation enacted by the 1994 session affect police and firefighters' retirement. HB 738 permits an urban-county government to put its new police and firefighters in the County Employees Retirement System (CERS) under hazardous duty coverage, and requires the transfer of existing service credit in the local plan. Currently employed police officers or firefighters may transfer or stay in the local plan.

House Bill 890 reduces the retirement age for police and firefighters in urban-counties to 46, and provides for cost-of-living increases to begin at age 47 (KRS 67A.410).

KRS 67A.370 requires a retirement and benefit fund to be established in each urban-county for the members of the police and fire departments, their dependents and beneficiaries. The fund is mandated by KRS 67A.510 to be supported by active members' contributions in a sum equal to but not less than ten and one-half percent nor greater than eleven percent of each active member's current salary.

A retiree or surviving spouse who, as of January 1, 1996, was receiving an annuity which was less than the poverty standard established by the U.S. Department of Commerce received an increase to that 1996 level. The board may increase the annuity according to KRS 67A.690(1) (KRS 67A.430).

KRS 67A.520 requires the urban-county government to make current contributions on an actuarially funded basis. These contributions must be equal to the sum of the following:

(1) An annual amount resulting from the application of a rate percent of salaries of active members;

(2) An amount resulting from the application of a rate percent of the salaries of active members that will provide annual interest on the remaining liability for prior service.

(In any event, the total contribution of the government shall be at least 17% of the salaries of the active members participating in the fund.)

KRS 56A.530 governs how the fund is to be operated and managed. An eleven-member board of trustees shall be composed of the mayor, the commissioner of public safety, the commissioner of finance, the director of personnel, a retired member of the fund, the chiefs of the police and fire departments, and two active members from each department elected by the membership of each department.

Specific and detailed rules and requirements for the operation of the fund are contained in KRS 67A.360 through 67A.690.

Public Improvements. Urban-counties may undertake any public improvement pursuant to KRS 67A.710—67A.825. Proceedings to authorize, construct, and finance an improvement are initiated by the enactment of the "First Ordinance," which shall give notice to all affected residents of the project, and describe the nature and scope of the project. The First Ordinance shall call for a public hearing to be held on the project pursuant to KRS 67A.730.

KRS 67A.735 provides that at a subsequent meeting after the public hearing, the legislative body shall enact a "Second Ordinance," unless it finds that more than fifty percent (50%) of the residents to be benefited by the project object. This restriction does not apply if the project is that of constructing sanitary sewers to eliminate a health hazard. KRS 67A.745 requires all affected property owners to be notified. A 30-day statute of limitation provided for the filing of any suit against the project is guaranteed under KRS 67A.750.

KRS 67A.760 governs enactment of a "Third Ordinance" that authorizes the sale of bonds to finance the public improvement. The bonds shall be repaid by the levy of a special assessment tax against the benefited property owners pursuant to KRS 67A.755 and 67A.780. The moneys so collected shall be paid into a sinking fund.

Rent Regulation. KRS 65.875 prohibits urban-counties from controlling rents on private property.

Safety Officers. Pursuant to KRS 67A.075, the legislative body of the urban-county governments may appoint and prescribe the duties of safety officers as needed. The officers may:

(1) Issue citations for non-moving motor vehicle offenses;
(2) Issue citations for violation of any motor vehicle or traffic safety ordinance;
(3) Control and direct traffic on public ways; and
(4) Remove vehicles in violation of state or local laws.

1994 HB 401 amends KRS 67A.075 to permit safety officers in urban-county governments, when completing accident reports to issue citations relating to out-of-state drivers, unlicensed drivers, and drivers not in possession of a license.

Safety officers may not make arrests or carry deadly weapons and shall issue citations only for misdemeanors committed in their presence.

The only statutory qualification for safety officers is that they complete 120 hours of appropriate training certified by the Kentucky Law Enforcement Council.

Sanitary Improvements. An alternative procedure is provided in KRS 67A.871 to 67A.894 for construction of sanitary improvement projects. Any urban-county government, upon the finding "that the public health, safety and general welfare require construction of a wastewater collection project," may construct and finance such a project pursuant to KRS 67A.871 to 67A.894.

KRS 67A.875 provides for the procedure to be initiated by the enactment of an "Ordinance of Initiation," which shall announce the project and make findings of fact. A public hearing must be held pursuant to KRS 67A.876 and 67A.878 and notice of such hearing shall be given to all property owners affected by the project. After the hearing, the legislative body is required by KRS 67A.879 to enact an "Ordinance of Determination," which provides for the undertaking and the financing of the project, the abandonment of the project, or the alteration of the nature and scope of the project. If the project is altered in nature or scope, the "Ordinance of Initiation" and public hearings shall be repeated. There is a 30-day statute of limitation from the date of the passage of the ordinance for any property owner to file suit against the project pursuant to KRS 67A.880.

Finally, the legislative body may adopt an "Ordinance of Bond Authorization" under KRS 67A.883 that authorizes the issuance of bonds, levy a special assessment tax against the benefited property owners and specify all other financial arrangements. For financing assistance, an urban-county government may apply for financial assistance from the Kentucky Infrastructure Authority. All monies received for the payments of bonds are required to be paid into a sinking fund.

Pursuant to KRS 67A.893, an urban-county government may require property owners to "hookup" with the sewers.

Solid Waste Management. An urban-county government may license solid waste landfills and establish fees for the use of such landfills (KRS 68.178). An urban-county government must also comply with other state and federal solid waste management requirements.

Legal Liability of Urban-County Government

Pursuant to KRS 67A.060 an urban-county has the powers and characteristics of both cities and counties. A question arises over whether, when sued for a tort act, an urban-county is a city, and hence liable for its action, or a county, and immune from liability because of the doctrine of sovereign immunity. The Court of Appeals has ruled that an urban-county is not a city, but "is, like a county government, an arm of the state entitled to the protective cloak of sovereign immunity."[132]

Constitutionality of KRS Chapter 67A

Soon after KRS Chapter 67A was enacted, a suit was instituted to determine the constitutionality of the Act, and in 1972 the Kentucky Court of Appeals, in *Pinchback v. Stephens*, ruled that the Act was "not unconstitutional."[133]

The plaintiffs in *Pinchback* advanced two arguments against the constitutionality of the Act. The court dismissed summarily the plaintiff's first contention, that the Act was special legislation in violation of Section 59 of the Kentucky Constitution, since it excluded cities of the first class. The more serious objection in the eyes of the court was the plaintiff's contention that the Act was an unconstitutional delegation of legislative authority; specifically, the argument was that a charter drafted under the Act would necessarily run afoul of Section 156 of the Constitution, which mandates that cities of each class "possess the same powers and be subject to the same restrictions." The court refused to meet the question head on, but merely stated that "we are not persuaded that no plan produced under the statutes here in issue could possibly avoid violating Section 156."[134] In essence the court was refusing to rule until they had an actual charter before them. In summary, the court stated:

> Absent any all-inclusive, straight-out prohibition in our constitution against the grant to local voters of any power of self-government in regard to the structure of local government, this court is not disposed to bar the door to any and all possibility of action in this area.[135]

During that time, Lexington had begun the process of adopting an urban-county charter and consolidating city and county government. Petitions to initiate the process began circulating in the summer of 1970. By 1971 the petition drive was successful, and the Lexington-Fayette County Merger Commission was created to draft the comprehensive plan. The plan was placed on the ballot at the regular election in November of 1972, and was adopted by an overwhelming 68 percent of those casting their votes. Although the plan was adopted in 1972, it was not to go into effect until January 1, 1974. A "friendly" class action was instituted in Fayette Circuit Court to determine the constitutionality of the charter.[136] The case went to the Kentucky Court of Appeals, and on December 28, 1973, the court handed down a far-reaching decision in *Holsclaw v. Stephens*, which upheld KRS Chapter 67A and the urban-county charter, and resolved many of the questions left unanswered in *Pinchback*.[137]

The court first concluded that nothing in the Constitution limits units of local government to cities and counties or precludes the General Assembly's creating a new unit combining the powers of counties and cities. The court characterized the new urban-county form as "neither a city government nor a county government as those forms of government presently exist but...an entirely new creature in which are combined all of the powers of a county government and all the powers possessed by that class of cities to which the largest city in the county belongs."[138]

When the urban-county plan is adopted "all city government and all county government, except units and functions of county government established by the constitution" are extinguished.[139]

The court turned aside the argument that the charter-making provision of the Act was an unconstitutional delegation of legislative authority by saying that the legislature did not delegate its powers to make laws—which would be unconstitutional—but merely delegated the power to determine the structure of the new government. "The structure of urban-county government is nothing more than the machinery by which those powers and responsibilities may be executed and, therefore, the authority to provide the structure can be delegated."[140]

The court can perhaps be accused of having performed a feat of magic in writing this opinion, since by characterizing the urban-county form as a "new creature," it, in one sentence, very neatly removed most of the constitutional stumbling blocks to merged government, in that the "new creature," being neither a county nor a city, is thus exempt from all limitations placed upon cities and counties.

In summary, therefore, the residents of the "new creature" may structure the organization of the urban-county as they determine, except that constitutional county offices shall not be abolished. Although the urban-county is given quite broad home rule powers with respect to structure, the substantive powers to be exercised by the city are limited to those powers possessed by counties and the class of cities to which the largest city in the county belongs.

Since November of 1972, when the voters of the City of Lexington and of Fayette County adopted the urban-county form of government, other communities have expressed an interest in merging their local units of government:

1. City of Frankfort	and	Franklin County
2. Cities of Georgetown, Sadieville, and Stamping Ground	and	Scott County
3. Cities of Bowling Green, Smiths Grove, and Woodburn	and	Warren County
4. Cities of Owensboro and Whitesville	and	Daviess County
5. City of Ashland	and	Boyd County
6. City of Louisville	and	Jefferson County
7. City of Franklin	and	Simpson County
8. City of Campbellsville	and	Taylor County

The question of adopting an urban-county form of government was placed on the ballot in November of 1988 in both Franklin and Scott counties with the voters in both counties overwhelmingly defeating the referendum. In November of 1990, proposals were also defeated in Owensboro/Daviess County and Bowling Green/Warren County. In November of 2000, the citizens of Jefferson County voted to merge Louisville and Jefferson County. The new government is a consolidated local government which is discussed later.

Charter County

After the Franklin and Scott County experiences in 1988, concern began to arise as to whether KRS Chapter 67A had been so "tailored" over the years for the Lexington/Fayette County area that it could never be fully embraced or utilized by other communities. In response to this supposition, the 1990 General Assembly enacted Senate Bill 210, which authorized the formation of "charter county governments" in any county except those containing a city of the first class or having an urban-county government. The 1994 General Assembly enacted HB 913, which expands the provisions of KRS 67.825 and 67.830 to permit the consolidation of services or functions of the affected cities and county and more specifically outline the formation of the study commission under these statutes.

KRS 67.825-67.875 outline the requirements and procedures for establishing a charter county government. These statutes also provide direction for the redistricting of charter county legislative districts; the election of local officials; the dissolution of incorporated cities and special districts in the area; the rights, powers and immunities of charter counties; ordinance powers; variable tax rate service districts; employee civil service systems; employee political activity; and employee retirement systems.

Consolidated Local Government

A third type of merged government now exists. In addition to urban county governments and charter county governments, the 2000 General Assembly enacted KRS Chapter 67C (00 HB 647), which outlined a procedure for the consolidation of counties containing cities of the first class. The statutes required that a question regarding a possible city-county consolidation be placed on the November 2000 ballot in all counties containing a city of the first class. Having the only city of the first class, the voters of Jefferson County went to the polls and adopted the concept of a consolidated local government (CLG), which resulted in the merger of Jefferson County and the City of Louisville. The new consolidated local government became active January 3, 2003. It is known as the "Louisville/Jefferson County Metro Government."

KRS Chapter 67C requires not only a vote by the public on the question of local government consolidation, it also lays out the basic structure and organization of a new government if it is adopted. The statutes actually prescribe in detail the organizational structure and functions of a new governmental entity and the roles of its officers. This new entity is unlike urban-counties and charter counties, which allow a charter (study) commission to determine the structure, organization, and function of a proposed merged government before the merger question goes on the ballot as a proposal for public consideration. Legislators seemed to want to avoid some of the intense local haggling which seemed to be on-going in the Louisville/Jefferson County community regarding this subject through the years.

According to KRS chapter 67C, the adoption of a consolidated local government requires a city of the first class and its county to merge. It is empowered with all authority of the previously existing local governments (KRS 67C.101). A CLG will have a mayor elected at-large who will serve as the executive authority and a legislative council composed of 26 members who are nominated and elected by district that serve as the legislative authority (KRS 67C.105). The legislative council is also required annually to select a presiding officer by a majority vote of the council (KRS 67C.103). The positions of county judge/executive and the magistrates take a subordinate role to the mayor and council members of the CLG, but the positions cannot be entirely eliminated as they are created by the Kentucky Constitution.

A CLG is required initially to employ all employees of the previously existing city and county. These employees are to be vested with the same rights, privileges, and protections which they previously held. But the CLG may reorganize its personnel and staffing arrangements as authorized by statute and local ordinance (KRS 67C.107).

Unlike the Lexington/Fayette County merger which merged the entire county under one government, a CLG requires only the city of the first class and the county to merge. It allows all other incorporated cities in the county to continue to operate unless dissolved according to statute (KRS 67C.111). While it does prohibit the incorporation of any new cities after the date of the merger, it will grant the remaining cities in the county annexation authority after a 12-year waiting period following merger. Such annexations would require the approval of the legislative council of the CLG. Also, any city in existence after the merger could merge with other cities or the CLG or dissolve (KRS 67C.111).

In addition to the continued existence of other cities within the county, all taxing districts, fire protection districts, sanitation districts, water districts, and other special taxing or service districts are required to continue in operation unless dissolved according to statute (KRS 67C.113). All city and county ordinances will also continue in effect for a maximum period of five years or until amended or reenacted by the new CLG as provided by KRS 67C.115.

KRS Chapter 67C also outlines a required governmental policy of equal opportunity as well an affirmative action plan for all citizens within the CLG. This policy was included to ensure the protection of the minority community in all aspects of the CLG including employment, appointments to boards and commissions, contracting, and purchasing. KRS Chapter 67C requires that the percentage of minority representation to boards or commissions or the ranks of CLG employment must be no less than the percentage of minority citizens in the community or the percentage of minority representatives on the CLG legislative body, whichever is greater (KRS 676.117). In regards to an affirmative action plan, the plan must be prepared and implemented by the mayor (KRS 67C.119). This chapter additionally prescribes for the expiration of existing cooperative compacts in such counties, the salaries of elected officials, the hiring of their staff, the taxing authority and tax structure for the CLG, the designation of authority to make appointments, the ability of the CLG to form service districts, the annual audit of the CLG's funds by the State Auditor, and a removal process for elected CLG officers.

By 2002, it was already necessary for the General Assembly to begin "tweaking" the original language creating CLGs. Additional language was added in 2002 outlining the organization, structure, and function of a police force merit system in a CLG (KRS 67C.301 - 67C.327). There were also other additional changes to the original sections of KRS Chapter 67C and various other statutes in the omnibus 02 HB 659. Changes in that bill affected the appointment authority to boards and commissions, the name of the newly created government,

the creation of a removal process for elected officials, the creation of service districts for taxing purposes, and the employment of a clerk for the CLG. The bill made statutory references to CLGs in over 200 other statutes. Like those changes made through the years to KRS Chapter 67A for the Lexington-Fayette Urban-County Government, KRS Chapter 67C already appears to be taking on a tailor-made appearance with the Louisville/Jefferson County Metro Government in mind.

ENDNOTES

1. J. Zimmerman, *State and Local Government*, p. 1.

2. D. Mandelker, *State and Local Government in a Federal System*, p. 45.

3. *Fiscal Ct. of Jeff. Co. v. City of Louisville*, Ky., 559 S.W. 2d 478, 480 (1977).

4. See generally J. D. Morris, "Municipal Code," *70 Ky. L.J. 289* (1982).

5. *Text of Kentucky Constitutions of 1772, 1799, and 1850*, LRC Info. Bull. No. 31 (1965). See for general discussion and texts of earlier constitutions.

6. M. Wilson, *A Citizens Guide to the Kentucky Constitution*, LRC Res. Rep. No. 137, 79 (1977).

7. *Debates of the 1890 Constitutional Convention*, 2129 (1892).

8. J. Manning, *Government in Kentucky Cities*, 22 (1937).

9. *Todd v. General Assembly, Commonwealth of Kentucky, Kentucky Court of Appeals*, Ky., App.; 90-CA-22-MR; March 1, 1991; (unpublished opinion).

10. *The Constitution and Local Government*, LRC Info. Bull. No. 36, 26 (1964).

11. *Matthews v. Allen*, Ky., 360 S.W. 2d 135 (1962).

12. *Board of Ed. of Graves Co. v. Deweese*, Ky., 343 S.W. 2d 598 (1960).

13. Opinion of the Attorney General 80-171 (hereinafter cited as OAG); see also discussion of Sec. 246 of the Kentucky Constitution.

14. *Merritt v. Campbellsville*, Ky. App., 678 S.W.2d 788 (1984).

15. *City of Jeffersontown v. City of Hurstbourne*, Ky. App., 684 S.W.2d 23 (1984).

16. *Local Records Management*, Ky. Dept. for Libraries and Archives, Public Records Division.

17. 62 *C.J.S.*, Municipal Corporations, sec. 411 (1949).

18. *City of Bowling Green v. T. & E. Electrical Contractors*, Ky., 602 S.W. 2d 434 (1980). Kentucky, until 1945, held to the minority position that cities had an inherent right to self-government in purely municipal concerns. See *McDonald v. City of Louisville*, Ky., 68 S.W. 413 (1902). That minority position was not firmly rejected until 1960. In *Board of Trustees of P.*

& F.R.F. v. City of Paducah, Ky., 333 S.W. 2d 515, 517 (1960), the Court of Appeals rejected the position that cities have any inherent right to self-government: "The theory that the right of local self-government inheres in the municipalities of this state is essentially unsound, and is based upon the now discarded doctrine that the Constitution of this state is a grant or delegation of power by the people of the state to the state government, and is not, as is now generally recognized, a limitation upon a power which, merely by virtue of its sovereignty, would otherwise be absolute." (quoting *Ex parte City of Paducah*, 3 S.W. 2d 609).

19. 1980 Ky. Acts, Ch. 239, sec. 2; codified as KRS 82.082.

20. *Thomas v. Elizabethtown*, Ky., 403 S.W. 2d 269, (1965).

21. *Industrial Devel. Auth. v. Eastern Ky. Reg. Plan. Comm.*, Ky., 332 S.W. 2d 274 (1960).

22. *City of Owensboro v. McCormick*, Ky., 281 S.W. 2d 3 (1979).

23. *Smith v. City of Kuttawa*, Ky., 1 S.W. 2d 979, 982 (1928), quoting *In Re Mayor of New York*, 2 N.E. 642.

24. *Nourse v. City of Russellville*, Ky., 78 S.W. 2d 761, 764 (1935).

25. *Boyle v. Campbell*, Ky., 450 S.W. 2d 265, 268 (1979).

26. *Louisville & Nash. R.R. v. Commonwealth*, Ky., 488 S.W. 2d 329, 330 (1972).

27. *City of Harlan v. Scott*, Ky., 162 S.W. 2d 8, 9 (1942).

28. *Boyle v. Campbell*, supra, note 25, at 267, quoting 62 *C.J.S.* "Municipal Corp." sec. 143(3).

29. *Ibid*. at 267.

30. *Ibid*.

31. *In Re Hubbard*, 396 P. 2d 809 (Calif., 1964).

32. Calif. const., Art XI, sec. 11.

33. *In Re Hubbard*, supra note 31, at 812.

34. *Ibid*.

35. *Commonwealth v. Do, Inc.*, Ky., 674 S.W. 2d 519, (1984).

36. *Ibid*.

37. KRS 83.520 (emphasis added).

38. *Ibid*.

39. Prior to 1980 the following offices could be elective: comptroller and inspector (first class); treasurer (second and fourth class); assessor (second and fourth class); jailer (second class); attorney (second and fourth class); marshal (third and sixth class); clerk, collector, chief of police (fourth class).

40. OAG 82-287.

41. For further discussion see OAG 82-207.

42. OAG 82-17.

43. OAG 83-394.

44. Most of the largest cities in the United States possess some form of a strong mayor-council plan of government. As the name implies this plan vests substantial power in the hands of the chief executive. The plan is roughly analogous to the structure of private corporations. The mayor functions much as a corporate president, overseeing the day-to-day operations of the city. The legislative body functions as the board of directors, by setting policy, ratifying major decisions made by the mayor and generally staying removed from the day-to-day operations.

45. These numbers apply only to cities which have elected, pursuant to KRS 83A.160, to adopt the mayor-council form of government. Otherwise, cities operate under the commission plan or the city manager plan, with a commission composed of four commissioners and the mayor.

46. The commission plan was developed originally in Galveston, Texas. After a devastating tidal wave in 1901, the existing municipal government quickly showed itself to be impotent in dealing with the enormous problems of rebuilding the city. The problem was that the need for quick decisive action was thwarted by the weak mayor-council government, which quickly tied itself into knots. The solution was to throw out the old government and replace it with a new plan in which a small council possessed all the legislative, executive and administrative power of the city. As a corporate body the council made policy. What was unique was that individually the council members also served as heads of the various city departments. The plan worked well in Galveston and soon spread across the United States. The plan was attractive because it gave the appearance of avoiding waste, red tape and delay through the concentration of authority and responsibility in a relatively simple form of government.

47. The council-manager plan grew out of the perceived major failing of the commission plan, the lack of professional administration. The addition of an appointed professional

administrator seemed to correct that failing. The distinction of establishing the first city manager government goes to Sumter, South Carolina, which adopted such a plan in 1908.

48. OAG 82-168.

49. *National Council on Governmental Accounting*, Governmental Accounting and Financial Reporting Principles: Statement 1, 5 (1979).

50. *Governmental Accounting, Auditing, and Financial Reporting*, Municipal Finance Officers Ass'n of the U.S. and Canada, Appendix B, 53 (1981).

51. *National Council on Governmental Accounting*, supra note 49, at 4.

52. *Ibid*. at 5 and 6.

53. *Ibid*. at 6.

54. *Ibid*.

55. *Government Accounting, Auditing and Financial Reporting*, supra note 50, at Appendix B, p. 55.

56. *City of Louisville v. Miller*, Ky. App., 697 S.W.2d 164 (1985).

57. See *City of Lexington v. Motel Devel., Inc.*, Ky., 465 S.W. 2d 253 (1971).

58. E. Trimble. "Excise Taxes and the Uniformity Clause of the Constitution of Kentucky," 25 *Ky. L.J.* 342, 343 (1936).

59. *Reynolds Metal Co. v. Martin*, 107 S.W. 2d 251, 269 Ky. 378, 394 (1937).

60. *City of Louisville v. Sebree*, Ky., 214 S.W. 2d 248 (1948).

61. *Ibid*. at 253.

62. *Ibid*.

63. *Sims v. Board of Ed. of Jeff. Co.*, Ky., 290 S.W. 2d 491 (1961).

64. *Patrick v. City of Frankfort*, Ky., 539 S.W. 2d 275, 277 (1976).

65. *City of Lexington v. Motel Devel., Inc.*, supra note 57, at 264.

66. *Ibid*.

67. *City of Erlanger v. KSL Realty Corp.*, Ky., 704 S.W. 2d 649 (1986).

68. *Ibid*. at 650.

69. *Ibid*.

70. *Ibid*.

71. *Ibid*. at 651

72. *George Schuster & Co. v. City of Louisville*, Ky., 89 S.W. 689 (1903).

73. *Ibid*.

74. *City of Louisville*, supra note 60, at 257. Also see OAG 82-290.

75. OAG 82-189.

76. *American Bk. & Tr. Co. v. Dallas Co.*, 103 S. Ct. 3369 (1983).

77. *Russman v. Luckett*, Ky., 391 S.W. 2d 694 (1965).

78. OAG 82-381.

79. *Jacobs v. Lexington-Fayette Urban-County Government*, Ky., 60 S.W. 2d 10 (1978).
80. *Grim v. Moloney*, Ky., 358 S.W. 2d 496 (1962).

81. *Governmental Accounting, Auditing, and Financial Reporting*, supra note 50, at Appendix B, p. 60.

82. *Miller v. Covington Devel. Auth.*, Ky., 539 S.W. 2d 1 (1976).

83. *Haney v. City of Lexington*, Ky., 386 S.W. 2d 738 (1964).

84. *City of Louisville v. Louisville Seed Co.*, Ky., 433 S.W. 2d 638, 643 (1968). Also for a thorough analysis of municipal liability in Kentucky, see R. Snell. "A Plea for a Comprehensive Governmental Liability Statute," 74 *Ky. L.J.* 521 (1986).

85. *Gas Services Co., Inc. v. City of London*, Ky., 687 S.W. 2d 144, 148 (1985).

86. *Ibid*. at 148.

87. *Ibid*. at 147.

88. *Ibid*. at 148.

89. *Monell v. New York Dept. of Social Services*, 436 U.S. 658 (1978).

90. 15 U.S.C. Section 1 et. seq.

91. *Community Communications Co. v. City of Boulder*, 455 U.S. 40 (1982).

92. 15 U.S.C. Sections 34-36.

93. *Town of Hallie v. City of Eau Claire*, 105 S.Ct. 1713 (1985).

94. *Fisher v. City of Berkley*, 89 L.Ed.2d 206 (1986).

95. *Preferred Communications, Inc. v. City of Los Angeles*, 106 S.Ct. 2034 (1986).

96. *Nations City Weekly*, June 9, 1986, p. 8.

97. *Lasher v. Commonwealth*, Ky., 418 S.W. 2d 416, 417 (1967).

98. *Ibid*.

99. *Firestone Textile Co. Div. v. Meadows*, Ky., 666 S.W.2d 730, 731 (1983).

100. *Grzyb v. Evan*, Ky., 700 S.W.2d 399 (1985).

101. *Pari-Mutual Clerks Union v. Jockey Club*, Ky., 551 S.W.2d 801 (1977).

102. *Job Evaluation and Pay Administration in the Public Sector*, 86 (1960).

103. *Ibid*. at 87.

104. *Ibid*. at 89.

105. *Ibid*. at 248.

106. *Ibid*. at 247.

107. *Ibid*. at 266.

108. To assist cities in designing their personnel pay and classification plans, the Kentucky Training and Education Network (KTEN) prepared a manual in 1981 entitled *Public Personnel: Implementation and Administration*.

109. Yokley, *Municipal Corporations*, sec. 344, p. 177.

110. 42 U.S.C. sec. 2000-e and KRS Chap. 344.

111. 29 U.S.C. sec. 201-219.

112. *Garcia v. San Antonia Metro. Transit Auth.* 53 L.W. 4135 (1985).

113. 51 *Fed. Reg.* 13, 402 (1986) (to be codified at 29 C.F.R. Sec. 553 (proposed April 18, 1986).

114. *City of Ashland v. The Trustees of the Ky. Retire. Sys.*, (Franklin Cir., 85-Cl-0391, Feb. 25, 1986).

115. *Miles v. Shauntee*, Ky., 664 S.W.2d 512 (1983).

116. *Ibid*. at sec. 23.1, p. 642.

117. D. McCarthy, *Local Government Law*, 219 (1975).

118. *City of Owensboro v. Topvision Cable Co. of Ky*., Ky., 487 S.W. 2d 283 (1972), quoting *Ray v. City of Owensboro*, Ky., 414 S.W. 2d 77 (1967).

119. C. Rhyne, *The Law of Local Gov't Operations*, sec. 16.2, p. 401.

120. *City of Renton v. Playtime Theatres, Inc.*, 89 L.Ed.2d 29 (1986). See also *Young v. American Mini Theatres*, 49 L.Ed.2d 310 (1976).

121. *Ibid*. at 38.

122. D. Tarlock, "Kentucky Planning and Land Use Control Enabling Legislation: An Analysis of KRS Chapter 100," 56 *Ky. L.J.* 556, 580 (1967).

123. *Ibid*. at 563.

124. The disciplinary procedures for police and firefighters set out in KRS 95.765 are confusing, and it would appear from reading that statute that the procedure applies to all police and firefighters regardless of whether civil service is adopted. However, that statute must be read with KRS 95.761, which permits the cities to adopt civil service. See *City of Pikeville v. May*, Ky., 374 S.W.2d 843 (1964). Also see OAG 82-501 and 83-231.

125. *McCloud v. Whitt*, Ky. App., 639 S.W. 2d 375 (1982).

126. Unpublished opinion of Ky. Att'y General, to Robert G. Newland, dated Sept. 26, 1980, cited in Brief for Appellee, p. 4, Id.

127. *Ibid*. at 377.

128. *Ibid*.

129. For detailed examination of statutes governing police discipline, see *Final Report: Special Committee to Study Procedures Against Local Government Police Officers*, LRC Res. Rep. No. 213 (1984).

130. Ky. Const. sec. 104.

131. *Jacobs v. Lexington-Fayette Urban-County Government*, Ky., 560 S.W. 2d 10 (1978).

132. *Hempel v. Lexington-Fayette Urban-County Government*, Ky. App., 641 S.W. 2d 51, 53 (1982).

133. *Pinchback v. Stephens*, Ky., 478 S.W. 2d 377 (1972).

134. *Ibid*. at 330.

135. *Ibid*.

136. For further reading on the history of KRS Chapter 67A and the foundation of the Lexington-Fayette Urban-County Government, see E. Lyons, *The Politics of City-County Merger* (1977).

137. *Holsclaw v. Stephens*, Ky., 507 S.W. 2d 462 (1974).

138. *Ibid*. at 470.

139. *Ibid*. at 474.

140. *Ibid*. at 471.

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APPENDIX I

July, 2002
(Based on 2000 pop. census est.)

KENTUCKY CITIES BY CLASS

City	Population	County	Form
1st Class (Greater than 100,000)			
Louisville	256,231	Jefferson	MA
Total # in class	1		
Total population in class	256,231		
2nd Class (Greater than 20,000, less than 100,000)			
Ashland	21,981	Boyd	CM
Bowling Green	49,296	Warren	CM
Covington	43,370	Kenton	CM
Frankfort	27,741	Franklin	CM
*Henderson	27,373	Henderson	CM
Hopkinsville	30,089	Christian	MC
*Jeffersontown	26,633	Jefferson	MC
*Lexington	260,512	Fayette	UCG
*Newport	17,048	Campbell	CM
Owensboro	54,067	Daviess	CM
Paducah	26,307	McCracken	CM
*Radcliff	21,961	Hardin	MC
Richmond	27,152	Madison	CM
Total # in class	13		
Total population in class	633,530		
3rd Class (Greater than 8,000, less than 20,000)			
Campbellsville	10,498	Taylor	MC
*Corbin	7,742	Whitley & Knox	CM
Danville	15,477	Boyle	CM
Erlanger	16,676	Kenton	MC

*Flatwoods	7,605	Greenup	MC
Florence	23,551	Boone	MC
Glasgow	13,019	Barren	MC
*Hazard	4,806	Perry	CM
*Independence	14,982	Kenton	MC
Mayfield	10,349	Graves	MC
*Maysville	8,993	Mason	CM
Middlesboro	10,384	Bell	MC
Murray	14,950	Calloway	MC
Nicholasville	19,680	Jessamine	COMM
Paris	9,183	Bourbon	CM
*Pikeville	6,295	Pike	CM
Shively	15,157	Jefferson	MC
Somerset	11,352	Pulaski	MC
Winchester	16,724	Clark	CM
Total # in class	19		
Total population in class	237,423		
4th Class (Greater than 3,000, less than 8,000)			
Albany	2,220	Clinton	MC
Alexandria	8,286	Campbell	MC
*Anchorage	2,264	Jefferson	MC
*Augusta	1,204	Bracken	MC
Barbourville	3,589	Knox	MC
Bardstown	10,374	Nelson	MC
*Beaver Dam	3,033	Ohio	COMM
Bellevue	6,480	Campbell	MC
Benton	4,197	Marshall	MC
*Berea	9,851	Madison	MC
*Calvert City	2,701	Marshall	MC
*Carlisle	1,917	Nicholas	MC
Carrollton	3,846	Carroll	MC
*Catlettsburg	1,960	Boyd	MC
Cave City	1,880	Barren	MC
Central City	5,893	Muhlenberg	MC
Columbia	4,014	Adair	MC
Crescent Springs	3,931	Kenton	MC
Cumberland	2,611	Harlan	MC
Cynthiana	6,258	Harrison	COMM
Dawson Springs	2,980	Hopkins	MC

Dayton	5,966	Campbell	MC
Douglass Hills	5,718	Jefferson	MC
*Earlington	1,649	Hopkins	MC
*Edgewood	9,400	Kenton	MC
*Elizabethtown	22,542	Hardin	MC
*Elkhorn City	1,060	Pike	MC
*Elkton	1,984	Todd	MC
Elsmere	8,139	Kenton	MC
*Eminence	2,231	Henry	MC
*Falmouth	2,058	Pendleton	MC
Flemingsburg	3,010	Fleming	MC
Fort Mitchell	8,089	Kenton	MC
*Fort Thomas	16,495	Campbell	MC
Fort Wright	5,681	Kenton	MC
Franklin	7,996	Simpson	CM
Fulton	2,775	Fulton	CM
*Georgetown	18,080	Scott	MC
Graymoor-Devondale	2,925	Jefferson	
Grayson	3,877	Carter	MC
Greenville	4,398	Muhlenberg	MC
Guthrie	1,469	Todd	MC
*Harlan	2,081	Harlan	MC
Harrodsburg	8,014	Mercer	COMM
*Hickman	2,560	Fulton	CM
Highland Heights	6,554	Campbell	MC
Hillview	7,037	Bullitt	MC
*Hodgenville	2,874	Larue	MC
Horse Cave	2,252	Hart	MC
Hurstbourne	3,884	Jefferson	COMM
*+Indian Hills	2,882	Jefferson	MC
*Irvine	2,843	Estill	MC
*Jackson	2,490	Breathitt	MC
*Jenkins	2,401	Letcher	MC
LaGrange	5,676	Oldham	MC
Lawrenceburg	9,014	Anderson	MC
Lebanon	5,718	Marion	MC
Leitchfield	6,139	Grayson	MC
London	5,692	Laurel	MC
Ludlow	4,409	Kenton	MC
*Lyndon	9,369	Jefferson	MC
*Madisonville	19,307	Hopkins	MC
*Manchester	1,738	Clay	MC
Marion	3,196	Crittenden	MC

*Martin	633	Floyd	MC
Middletown	5,744	Jefferson	COMM
Monticello	5,981	Wayne	MC
*Morehead	5,914	Rowan	MC
Morganfield	3,494	Union	MC
Mount Sterling	5,876	Montgomery	MC
Mount Washington	8,485	Bullitt	MC
Oak Grove	7,064	Christian	MC
*Olive Hill	1,813	Carter	MC
*Owingsville	1,488	Bath	MC
Paintsville	4,132	Johnson	MC
Park Hills	2,977	Kenton	MC
*Pineville	2,093	Bell	MC
Pioneer Village	2,555	Bullitt	MC
Prestonsburg	3,612	Floyd	MC
Princeton	6,536	Caldwell	MC
*Prospect	4,657	Jefferson	MC
Providence	3,611	Webster	MC
Russell	3,645	Greenup	MC
Russellville	7,149	Logan	MC
*Saint Regis Park	1,520	Jefferson	MC
*Salyersville	1,604	Magoffin	MC
Scottsville	4,327	Allen	MC
Shelbyville	10,085	Shelby	MC
Shepherdsville	8,334	Bullitt	MC
Southgate	3,472	Campbell	MC
*Springfield	2,634	Washington	MC
*St. Matthews	17,320	Jefferson	MC
Stanford	3,430	Lincoln	MC
*Stanton	3,029	Powell	MC
*Sturgis	2,030	Union	MC
Taylor Mill	6,913	Kenton	COMM
*Vanceburg	1,731	Lewis	MC
Versailles	7,511	Woodford	MC
Villa Hills	7,948	Kenton	MC
Vine Grove	4,169	Hardin	MC
*West Liberty	3,277	Morgan	MC
Williamsburg	6,074	Whitley	MC
Wilmore	5,143	Jessamine	MC
Total # in class	100		
Total population in class	524,272		

5th Class (Greater than 1,000, less than 3,000)			
*Adairville	920	Logan	MC
Auburn	1,444	Logan	MC
Audubon Park	1,545	Jefferson	MC
Barbourmeade	1,260	Jefferson	COMM
*Bardwell	799	Carlisle	MC
Beattyville	1,193	Lee	MC
Beechwood Village	1,173	Jefferson	MC
*Benham	599	Harlan	MC
*Bloomfield	855	Nelson	MC
Brandenburg	2,049	Meade	MC
Brodhead	1,193	Rockcastle	
*Bromley	838	Kenton	MC
*Brooksville	589	Bracken	MC
*Brownsville	921	Edmonson	COMM
*Burgin	874	Mercer	MC
Burkesville	1,756	Cumberland	MC
Burnside	637	Pulaski	MC
*Butler	613	Pendleton	COMM
Cadiz	2,373	Trigg	MC
Calhoun	836	McLean	MC
Camargo	923	Montgomery	MC
*Campbellsburg	705	Henry	MC
Clay	1,179	Webster	MC
Clay City	1,303	Powell	MC
Clinton	1,415	Hickman	MC
Cloverport	1,256	Breckinridge	MC
Cold Spring	3,806	Campbell	MC
*Columbus	229	Hickman	MC
*Corydon	744	Henderson	MC
Crestview Hills	2,889	Kenton	MC
Crestwood	1,999	Oldham	
*Crittenden	2,401	Grant	MC
*Crofton	838	Christian	MC
*Drakesboro	627	Muhlenberg	MC
Dry Ridge	1,995	Grant	MC
Eddyville	2,350	Lyon	MC
Edmonton	1,586	Metcalfe	MC
Evarts	1,101	Harlan	MC
*Ferguson	881	Pulaski	MC
*Fleming-Neon	840	Letcher	MC

*Fredonia	420	Caldwell	MC
*Grand Rivers	343	Livingston	MC
Greensburg	2,396	Green	MC
Greenup	1,198	Greenup	MC
*Hardin	564	Marshall	MC
Hardinsburg	2,345	Breckinridge	MC
Hartford	2,570	Ohio	MC
Hawesville	971	Hancock	MC
Hebron Estates	1,104	Bullitt	
*Hindman	787	Knott	MC
Hollow Creek	815	Jefferson	MC
Hurstbourne Acres	1,504	Jefferson	COMM
*Hustonville	347	Lincoln	MC
+Indian Hills-Cherokee		Jefferson	
Irvington	1,257	Breckinridge	MC
Jamestown	1,624	Russell	MC
Jeffersonville	1,804	Montgomery	MC
Junction City	2,184	Boyle	MC
*Kuttawa	596	Lyon	MC
La Center	1,038	Ballard	MC
*Lakeside Park	2,869	Kenton	MC
*Lancaster	3,734	Garrard	MC
Lebanon Junction	1,801	Bullitt	MC
*Lewisburg	903	Logan	MC
Lewisport	1,639	Hancock	MC
Liberty	1,850	Casey	MC
Livermore	1,482	McLean	MC
Louisa	2,018	Lawrence	MC
Loyall	766	Harlan	MC
Lynch	900	Harlan	MC
Lynnview	965	Jefferson	MC
*McKee	878	Jackson	MC
*Meadow Vale	765	Jefferson	MC
Midway	1,620	Woodford	MC
*Millersburg	842	Bourbon	MC
Minor Lane Heights	1,435	Jefferson	MC
Morgantown	2,544	Butler	MC
*Morton's Gap	952	Hopkins	MC
*Mt. Olivet	289	Robertson	MC
Mt. Vernon	2,592	Rockcastle	MC
Muldraugh	1,298	Meade	MC
Munfordville	1,563	Hart	MC
New Castle	919	Henry	COMM

*North Middletown	562	Bourbon	COMM
*Northfield	970	Jefferson	MC
Nortonville	1,264	Hopkins	MC
Orchard Grass Hills	1,031	Oldham	MC
Owenton	1,387	Owen	MC
*Park City	517	Barren	MC
*Perryville	763	Boyle	MC
Pewee Valley	1,436	Oldham	MC
*Plantation	902	Jefferson	MC
*Powderly	846	Muhlenberg	MC
Raceland	2,355	Greenup	MC
*Ravenna	693	Estill	MC
Rolling Hills	907	Jefferson	MC
Russell Springs	2,399	Russell	MC
*Sandy Hook	678	Elliott	MC
Sebree	1,558	Webster	MC
Silver Grove	1,215	Campbell	MC
Simpsonville	1,281	Shelby	MC
Smiths Grove	784	Warren	COMM
South Shore	1,226	Greenup	COMM
Tompkinsville	2,660	Monroe	MC
*Union	2,893	Boone	COMM
Uniontown	1,064	Union	MC
Walton	2,450	Boone	MC
Warsaw	1,811	Gallatin	MC
Watterson Park	953	Jefferson	MC
West Buechel	1,301	Jefferson	MC
West Point	1,100	Hardin	MC
Whitesburg	1,600	Letcher	MC
White Plains	800	Hopkin	COMM
*Wickliffe	794	Ballard	MC
*Wilder	2,624	Campbell	MC
*Williamstown	3,227	Grant	MC
Windy Hills	2,480	Jefferson	MC
Woodlawn Park	1,033	Jefferson	MC
Worthington	1,673	Greenup	MC
Total # in class	118		
Total population in class	161,312		
6th Class (Less than 1,000)			
Allen	150	Floyd	MC

Arlington	395	Carlisle	MC
Bancroft	536	Jefferson	COMM
Barlow	715	Ballard	COMM
Bedford	677	Trimble	MC
Bellefonte	837	Greenup	MC
Bellemeade	871	Jefferson	COMM
Bellewood	300	Jefferson	MC
Berry	310	Harrison	MC
Blackey	153	Letcher	COMM
Blaine	245	Lawrence	MC
Blueridge Manor	623	Jefferson	COMM
Bonnieville	354	Hart	COMM
Booneville	111	Owsley	COMM
Bradfordsville	304	Marion	MC
Bremen	365	Muhlenberg	MC
Briarwood	554	Jefferson	COMM
+Broadfields		Jefferson	
Broeck Pointe	294	Jefferson	MC
Brownsboro Farm	676	Jefferson	COMM
Brownsboro Village	318	Jefferson	COMM
Buckhorn	144	Perry	
California	86	Campbell	
Cambridge	192	Jefferson	
Campton	424	Wolfe	COMM
Caneyville	627	Grayson	MC
Carrsville	64	Livingston	MC
Centertown	416	Ohio	COMM
+Cherrywood Village		Jefferson	
Clarkson	794	Grayson	COMM
Coal Run Village	577	Pike	COMM
Coldstream	956	Jefferson	
Concord	28	Lewis	MC
Corinth	181	Grant	COMM
Crab Orchard	842	Lincoln	COMM
Creekside	336	Jefferson	MC
+Crescent Park		Kenton	
Crestview	471	Campbell	COMM
Crossgate	251	Jefferson	MC
Dixon	532	Webster	COMM
Dover	316	Mason	COMM
Druid Hills	318	Jefferson	MC
Ekron	170	Meade	
Eubank	358	Pulaski	COMM

Ewing	278	Fleming	COMM
Fairfield	72	Nelson	
+Fairmeade		Jefferson	
Fairview	156	Kenton	MC
Fincastle	825	Jefferson	COMM
Fordsville	531	Ohio	MC
Forest Hills	494	Jefferson	COMM
Fountain Run	236	Monroe	MC
Fox Chase	476	Bullitt	MC
Frenchburg	551	Menifee	COMM
Gamaliel	439	Monroe	MC
Germantown	190	Bracken	COMM
Ghent	371	Carroll	
Glencoe	251	Gallatin	MC
Glenview	558	Jefferson	
Glenview Hills	337	Jefferson	COMM
Glenview Manor	191	Jefferson	
Goose Creek	272	Jefferson	COMM
Goshen	907	Oldham	
Gratz	89	Owen	
Green Spring	759	Jefferson	
Hanson	625	Hopkins	COMM
Hazel	440	Calloway	MC
Hickory Hill	144	Jefferson	COMM
Hills and Dales	153	Jefferson	
Hiseville	224	Barren	
Hollyvilla	481	Jefferson	
Houston Acres	491	Jefferson	COMM
Hunters Hollow	372	Bullitt	MC
Hyden	204	Leslie	COMM
Inez	466	Martin	COMM
Island	435	McLean	
+Keeneland		Jefferson	
Kenton Vale	156	Kenton	MC
Kevil	574	Ballard	MC
Kingsley	428	Jefferson	
Lafayette	251	Christian	
Lakeview Heights	301	Rowan	COMM
Langdon Place	974	Jefferson	COMM
Latonia Lakes	325	Kenton	
Lincolnshire	154	Jefferson	
Livingston	228	Rockcastle	
Lone Oak	454	McCracken	COMM

Loretto	623	Marion	MC
Mackville	200	Washington	
Manor Creek	221	Jefferson	COMM
Maryhill Estates	175	Jefferson	
McHenry	417	Ohio	MC
Meadowbrook Farm	146	Jefferson	COMM
Meadowview Estates	422	Jefferson	COMM
Melbourne	457	Campbell	
Mentor	181	Campbell	MC
Milton	525	Trimble	
Mockingbird Valley	190	Jefferson	
Monterey	167	Owen	
Moorland	464	Jefferson	
Murray Hill	616	Jefferson	
Nebo	220	Hopkins	COMM
New Haven	849	Nelson	COMM
Norbourne Estates	461	Jefferson	
Norwood	395	Jefferson	
Oakland	260	Warren	MC
Old Brownsboro Place	384	Jefferson	
Park Lake	537	Oldham	
Parkway Village	715	Jefferson	COMM
Pembroke	797	Christian	COMM
Pippa Passes	297	Knott	
Pleasureville	869	Henry	
Plum Springs	447	Warren	
+Plymouth Village		Jefferson	
Poplar Hills	396	Jefferson	
Prestonsville	164	Carroll	
Raywick	144	Marion	
Richlawn	454	Jefferson	MC
River Bluff	402	Oldham	
Riverwood	469	Jefferson	COMM
+Robinswood		Jefferson	
Rochester	186	Butler	MC
Rockport	334	Ohio	MC
Rolling Fields	648	Jefferson	MC
Ryland Heights	799	Kenton	MC
Sacramento	517	McLean	
Sadieville	263	Scott	COMM
Salem	769	Livingston	COMM
Salt Lick	342	Bath	MC
Sanders	246	Carroll	

Sardis	149	Mason	
Science Hill	634	Pulaski	MC
Seneca Gardens	699	Jefferson	MC
Sharpsburg	295	Bath	
Slaughters	238	Webster	MC
Smithfield	102	Henry	COMM
Smithland	401	Livingston	COMM
Sonora	350	Hardin	
South Carrollton	184	Muhlenberg	MC
South Park View	196	Jefferson	MC
Sparta	230	Gallatin	MC
+Springlee		Jefferson	
Spring Mill	380	Jefferson	COMM
Spring Valley	668	Jefferson	MC
St. Charles	309	Hopkins	COMM
Stamping Ground	566	Scott	MC
Strathmoor Manor	333	Jefferson	MC
Strathmoor Village	625	Jefferson	COMM
Sycamore	159	Jefferson	NA
*Taylorsville	1,009	Spencer	MC
Ten Broeck	129	Jefferson	
Thornhill	175	Jefferson	COMM
Trenton	419	Todd	
Upton	654	Hardin/Larue	MC
Vicco	318	Perry	
Wallins	257	Harlan	MC
Warfield	284	Martin	MC
Water Valley	316	Graves	
Waverly	297	Union	COMM
Wayland	298	Floyd	MC
Wellington	561	Jefferson	COMM
Westwood	612	Jefferson	COMM
Wheatcroft	173	Webster	
*Wheelwright	1,042	Floyd	
Whipps Millgate	415	Jefferson	
Whitesville	632	Daviess	COMM
Wildwood	247	Jefferson	MC
Willisburg	304	Washington	MC
+Winding Falls		Jefferson	
Wingo	581	Graves	COMM
Woodburn	323	Warren	MC
Woodbury	87	Butler	
Woodland Hills	657	Jefferson	

Woodlawn	268	Campbell	MC
*Worthington Hills	1,594	Jefferson	
Worthville	215	Carroll	COMM
*Wurtland	1,049	Greenup	COMM
Total # in class	170		
Total population in class	73,447		

+ The Cities of Indian Hills (4th class), Indian Hills-Cherokee (5th class), Winding Falls (6th class), and Robinswood (6th class) in Jefferson County were merged November 1999.

+ The cities of Plymouth Village, Broadfields, Springlee, Cherrywood Village, and Fairmeade were merged with the City of Saint Matthews in 2000. And the City of Keeneland was merged with the City of Lyndon in 2000.

*Staff notation only

+ The City of Crescent Park, in Kenton County, merged with the City of Ft. Mitchell in 2000.

APPENDIX II

Adair (17,244)	Columbia	4,014	MC	4th
Allen (16,854)	Scottsville	4,327	MC	4th
Anderson (17,800)	Lawrenceburg	9,014	MC	4th
Ballard	Blandville (unincorp)			6th
Ballard	Kevil	574	MC	6th
Ballard	La Center	1,038	MC	5th
Ballard	Wickcliffe	794	MC	5th
Ballard (8,286)	Barlow	715	COMM	6th
Barren	Glasgow	13,019	MC	3rd
Barren	Hiseville	224		6th
Barren	Park City	517	MC	5th
Barren (38,033)	Cave City	1,880	MC	4th
Bath	Salt Lick	342	MC	6th
Bath	Sharpsburg	295		6th
Bath (11,085)	Owingsville	1,488	MC	4th
Bell	Pineville	2,093	MC	4th
Bell (30,060)	Middlesboro	10,384	MC	3rd
Boone	Union	2,893	COMM	5th
Boone	Walton	2,450	MC	5th
Boone (85,991)	Florence	23,551	MC	3rd
Bourbon	North Middletown	562	COMM	5th
Bourbon	Paris	9,183	CM	3rd
Bourbon (19,360)	Millersburg	842	MC	5th
Boyd	Catlettsburg	1,960	MC	4th
Boyd (49,752)	Ashland	21,981	CM	2nd
Boyle	Junction City	2,184	MC	5th
Boyle	Perryville	763	MC	5th
Boyle (27,697)	Danville	15,477	CM	3rd
Bracken	Brooksville	589	MC	5th
Bracken	Foster (unincorp)			6th
Bracken	Germantown	190	COMM	6th
Bracken (8,279)	Augusta	1,204	MC	4th
Breathitt (16,100)	Jackson	2,490	MC	4th
Breckinridge	Hardinsburg	2,345	MC	5th
Breckinridge	Irvington	1,257	MC	5th
Breckinridge (18,648)	Cloverport	1,256	MC	5th
Bullitt	Hebron Estates	1,104		5th
Bullitt	Hillview	7,037	MC	4th
Bullitt	Hunters Hollow	372	MC	6th
Bullitt	Lebanon Junction	1,801	MC	5th
Bullitt	Mt. Washington	8,485	MC	4th
Bullitt	Pioneer Village	2,555	MC	4th
Bullitt	Shepherdsville	8,334	MC	4th

Bullitt (61,236)	Fox Chase	476	MC	6th
Butler	Rochester	186		6th
Butler	Woodbury	87		6th
Butler (13,010)	Morgantown	2,544	MC	5th
Caldwell	Princeton	6,536	MC	4th
Caldwell (13,060)	Fredonia	420	MC	5th
Calloway	Murray	14,950	MC	3rd
Calloway (34,177)	Hazel	440	MC	6th
Campbell	Bellevue	6,480	MC	4th
Campbell	California	86		6th
Campbell	Cold Spring	3,806	MC	5th
Campbell	Crestview	471	COMM	6th
Campbell	Dayton	5,966	MC	4th
Campbell	Fort Thomas	16,495	MC	4th
Campbell	Highland Heights	6,554	MC	4th
Campbell	Melbourne	457		6th
Campbell	Mentor	181	MC	6th
Campbell	Newport	17,048	CM	2nd
Campbell	Silver Grove	1,215	MC	5th
Campbell	Southgate	3,472	MC	4th
Campbell	Wilder	2,624	MC	5th
Campbell	Woodlawn	268	MC	6th
Campbell (88,616)	Alexandria	8,286	MC	4th
Carlisle	Bardwell	799	MC	5th
Carlisle (5,351)	Arlington	395	MC	6th
Carroll	Ghent	371		6th
Carroll	Prestonsville	164		6th
Carroll	Sanders	246		6th
Carroll	Worthville	215	COMM	6th
Carroll (10,155)	Carrollton	3,846	MC	4th
Carter	Olive Hill	1,813	MC	4th
Carter (26,889)	Grayson	3,877	MC	4th
Casey (15,447)	Liberty	1,850	MC	5th
Christian	Hopkinsville	30,089	MC	2nd
Christian	Lafayette	251		6th
Christian	Oak Grove	7,064	MC	4th
Christian	Pembroke	797	COMM	6th
Christian (72,265)	Crofton	838	MC	5th
Clark (33,144)	Winchester	16,724	CM	3rd
Clay (24,556)	Manchester	1,738	MC	4th
Clinton (9,634)	Albany	2,220	MC	4th
Crittenden (9,384)	Marion	3,196	MC	4th
Cumberland (7,147)	Burkesville	1,756	MC	5th
Daviess	Whitesville	632	COMM	6th
Daviess (91,545)	Owensboro	54,067	CM	2nd

Edmonson (11,644)	Brownsville	921	COMM	5th
Elliott (6,748)	Sandy Hook	678	MC	5th
Estill	Ravenna	693	MC	5th
Estill (15,307)	Irvine	2,843	MC	4th
Fayette (260,512)	Lexington	260,512	UCG	2nd
Fleming	Flemingsburg	3,010	MC	4th
Fleming (13,792)	Ewing	278	COMM	6th
Floyd	Martin	633	MC	4th
Floyd	Prestonsburg	3,612	MC	4th
Floyd	Wayland	298	MC	6th
Floyd	Wheelwright	1,042		6th
Floyd (42,441)	Allen	150	MC	6th
Franklin (47,687)	Frankfort	27,741	CM	2nd
Fulton	Hickman	2,560	CM	4th
Fulton (7,752)	Fulton	2,775	CM	4th
Gallatin	Sparta	230	MC	6th
Gallatin	Warsaw	1,811	MC	5th
Gallatin (7,870)	Glencoe	251	MC	6th
Garrard (14,792)	Lancaster	3,734	MC	5th
Grant	Crittenden	2,401	MC	5th
Grant	Dry Ridge	1,995	MC	5th
Grant	Williamstown	3,227	MC	5th
Grant (22,384)	Corinth	181	COMM	6th
Graves	Water Valley	316		6th
Graves	Wingo	581	COMM	6th
Graves (37,028)	Mayfield	10,349	MC	3rd
Grayson	Clarkson	794	COMM	6th
Grayson	Leitchfield	6,139	MC	4th
Grayson (24,053)	Caneyville	627	MC	6th
Green (11,518)	Greensburg	2,396	MC	5th
Greenup	Flatwoods	7,605	MC	3rd
Greenup	Greenup	1,198	MC	5th
Greenup	Raceland	2,355	MC	5th
Greenup	Russell	3,645	MC	4th
Greenup	South Shore	1,226	COMM	5th
Greenup	Worthington	1,673	MC	5th
Greenup	Wurtland	1,049	COMM	6th
Greenup (36,391)	Bellefonte	837	MC	6th
Hancock	Lewisport	1,639	MC	5th
Hancock (8,392)	Hawesville	971	MC	5th
Hardin	Radcliff	21,961	MC	2nd
Hardin	Sonora	350		6th
Hardin	Vine Grove	4,169	MC	4th
Hardin	West Point	1,100	MC	5th
Hardin (94,174)	Elizabethtown	22,542	MC	4th

Hardin-Larue	Upton	654	MC	6th
Harlan	Cumberland	2,611	MC	4th
Harlan	Evarts	1,101	MC	5th
Harlan	Harlan	2,081	MC	4th
Harlan	Loyall	766	MC	5th
Harlan	Lynch	900	MC	5th
Harlan	Wallins	257	MC	6th
Harlan (33,202)	Benham	599	MC	5th
Harrison	Cynthiana	6,258	COMM	4th
Harrison (17,983)	Berry	310	MC	6th
Hart	Horse Cave	2,252	MC	4th
Hart	Munfordville	1,563	MC	5th
Hart (17,445)	Bonnieville	354	COMM	6th
Henderson	Henderson	27,373	CM	2nd
Henderson (44,829)	Corydon	744	MC	5th
Henry	Eminence	2,231	MC	4th
Henry	New Castle	919	COMM	5th
Henry	Pleasureville	869		6th
Henry	Smithfield	102	COMM	6th
Henry (15,060)	Campbellsburg	705	MC	5th
Hickman	Columbus	229	MC	5th
Hickman (5,262)	Clinton	1,415	MC	5th
Hopkins	Earlington	1,649	MC	4th
Hopkins	Hanson	625	COMM	6th
Hopkins	Madisonville	19,307	MC	4th
Hopkins	Morton’s Gap	952	MC	5th
Hopkins	Nebo	220	COMM	6th
Hopkins	Nortonville	1,264	MC	5th
Hopkins	St. Charles	309	COMM	6th
Hopkins	White Plains	800	COMM	5th
Hopkins (46,519)	Dawson Springs	2,980	MC	4th
Jackson (13,495)	McKee	878	MC	5th
Jefferson	Audubon Park	1,545	MC	5th
Jefferson	Bancroft	536	COMM	6th
Jefferson	Barbourmeade	1,260	COMM	5th
Jefferson	Beechwood Village	1,173	MC	5th
Jefferson	Bellemeade	871	COMM	6th
Jefferson	Bellewood	300	MC	6th
Jefferson	Blue Ridge Manor	623	COMM	6th
Jefferson	Briarwood	554	COMM	6th
Jefferson	Broeck Pointe	294	MC	6th
Jefferson	Brownsboro Farm	676	COMM	6th
Jefferson	Brownsboro Village	318	COMM	6th
Jefferson	Cambridge	192		6th

Jefferson	Coldstream	956		6th
Jefferson	Creekside	336	MC	6th
Jefferson	Crossgate	251	MC	6th
Jefferson	Douglass Hills	5,718	MC	4th
Jefferson	Druid Hills	318	MC	6th
Jefferson	Fincastle	825	COMM	6th
Jefferson	Forest Hills	494	COMM	6th
Jefferson	Glenview	558		6th
Jefferson	Glenview Hills	337	COMM	6th
Jefferson	Glenview Manor	191		6th
Jefferson	Goose Creek	272	COMM	6th
Jefferson	Graymoor/Devondale	2,925		4th
Jefferson	Green Spring	759		6th
Jefferson	Hickory Hill	144	COMM	6th
Jefferson	Hills ‘n Dales	153		6th
Jefferson	Hollow Creek	815	MC	5th
Jefferson	Hollyvilla	481		6th
Jefferson	Houston Acres	491	COMM	6th
Jefferson	Hurstbourne	3,884	COMM	4th
Jefferson	Hurstbourne Acres	1,504	COMM	5th
Jefferson	Indian Hills	2,882	MC	4th
Jefferson	Jeffersontown	26,633	MC	2nd
Jefferson	Kingsley	428		6th
Jefferson	Langdon Place	974	COMM	6th
Jefferson	Lincolnshire	154		6th
Jefferson	Louisville	256,231	MA	1st
Jefferson	Lyndon	9,369	MC	4th
Jefferson	Lynnview	965	MC	5th
Jefferson	Manor Creek	221	COMM	6th
Jefferson	Maryhill Estates	175		6th
Jefferson	Meadow Vale	765	MC	5th
Jefferson	Meadowbrook Farm	146	COMM	6th
Jefferson	Meadowview Estates	422	COMM	6th
Jefferson	Middletown	5,744	COMM	4th
Jefferson	Minor Lane Heights	1,435	MC	5th
Jefferson	Mockingbird Valley	190		6th
Jefferson	Moorland	464		6th
Jefferson	Murray Hill	616		6th
Jefferson	Norbourne Estates	461		6th
Jefferson	Northfield	970	MC	5th
Jefferson	Norwood	395		6th
Jefferson	Old Brownsboro Place	384		6th

Jefferson	Parkway Village	715	COMM	6th
Jefferson	Plantation	902	MC	5th
Jefferson	Poplar Hills	396		6th
Jefferson	Prospect	4,657	MC	4th
Jefferson	Richlawn	454	MC	6th
Jefferson	Riverwood	469	COMM	6th
Jefferson	Rolling Fields	648	MC	6th
Jefferson	Rolling Hills	907	MC	5th
Jefferson	Seneca Gardens	699	MC	6th
Jefferson	Shively	15,157	MC	3rd
Jefferson	South Park View	196	MC	6th
Jefferson	Spring Mill	380	COMM	6th
Jefferson	Spring Valley	468	MC	6th
Jefferson	St. Matthews	17,320	MC	4th
Jefferson	St. Regis Park	1,520	MC	4th
Jefferson	Strathmoor Manor	333	MC	6th
Jefferson	Strathmoor Village	625	COMM	6th
Jefferson	Sycamore	159	MA	6th
Jefferson	Ten Broeck	129		6th
Jefferson	Thornhill	175	COMM	6th
Jefferson	Watterson Park	953	MC	5th
Jefferson	Wellington	561	COMM	6th
Jefferson	West Buechel	1,301	MC	5th
Jefferson	Westwood	612	COMM	6th
Jefferson	Whipps Millgate	415		6th
Jefferson	Wildwood	247	MC	6th
Jefferson	Windy Hills	2,480	MC	5th
Jefferson	Woodland Hills	657		6th
Jefferson	Woodlawn Park	1,033	MC	5th
Jefferson	Worthington Hills	1,594		6th
Jefferson (693,604)	Anchorage	2,264	MC	4th
Jessamine	Wilmore	5,143	MC	4th
Jessamine (39,041)	Nicholasville	19,680	COMM	3rd
Johnson (23,445)	Paintsville	4,132	MC	4th
Kenton	Covington	43,370	CM	2nd
Kenton	Crescent Springs	3,931	MC	4th
Kenton	Crestview Hills	2,889	MC	5th
Kenton	Edgewood	9,400	MC	4th
Kenton	Elsmere	8,139	MC	4th
Kenton	Erlanger	16,676	MC	3rd
Kenton	Fairview	156	MC	6th
Kenton	Fort Mitchell	8,089	MC	4th
Kenton	Fort Wright	5,681	MC	4th

Kenton	Independence	14,982	MC	3rd
Kenton	Kenton Vale	156	MC	6th
Kenton	Lakeside Park	2,869	MC	5th
Kenton	Latonia Lakes	325		6th
Kenton	Ludlow	4,409	MC	4th
Kenton	Park Hills	2,977	MC	4th
Kenton	Ryland Heights	797	MC	6th
Kenton	Taylor Mill	6,913	COMM	4th
Kenton	Villa Hills	7,948	MC	4th
Kenton (151,464)	Bromley	838	MC	5th
Knott	Pippa Passes	297	6th	
Knott (17,649)	Hindman	787	MC	5th
Knox (31,795)	Barbourville	3,589	MC	4th
Larue (13,373)	Hodgenville	2,874	MC	4th
Laurel (52,715)	London	5,692	MC	4th
Lawrence	Louisa	2,018	MC	5th
Lawrence (15,569)	Blaine	245	MC	6th
Lee (7,916)	Beattyville	1,193	MC	5th
Leslie (12,401)	Hyden	204	COMM	6th
Letcher	Fleming-Neon	840	MC	5th
Letcher	Jenkins	2,401	MC	4th
Letcher	Whitesburg	1,600	MC	5th
Letcher (25,277)	Blackey	153	COMM	6th
Lewis	Vanceburg	1,731	MC	4th
Lewis (14,092)	Concord	28	MC	6th
Lincoln	Hustonville	347	MC	5th
Lincoln	Stanford	3,430	MC	4th
Lincoln (23,361)	Crab Orchard	842	COMM	6th
Livingston	Grand Rivers	343	MC	5th
Livingston	Salem	769	COMM	6th
Livingston	Smithland	401	COMM	6th
Livingston (9,804)	Carrsville	64	MC	6th
Logan	Auburn	1,444	MC	5th
Logan	Lewisburg	903	MC	5th
Logan	Russellville	7,149	MC	4th
Logan (26,573)	Adairville	920	MC	5th
Lyon	Kuttawa	596	MC	5th
Lyon (8,080)	Eddyville	2,350	MC	5th
Madison	Richmond	27,152	CM	2nd
Madison (70,872)	Berea	9,851	MC	4th
Magoffin (13,332)	Salyersville	1,604	MC	4th
Marion	Lebanon	5,718	MC	4th
Marion	Loretto	623	MC	6th
Marion	Raywick	144		6th
Marion (18,212)	Bradfordsville	304	MC	6th

Marshall	Calvert City	2,701	MC	4th
Marshall	Hardin	564	MC	5th
Marshall (30,125)	Benton	4,197	MC	4th
Martin	Warfield	284	MC	6th
Martin (12,578)	Inez	466	COMM	6th
Mason	Maysville	8,993	CM	3rd
Mason	Sardis	149		6th
Mason (16,800)	Dover	316	COMM	6th
McCracken	Paducah	26,307	CM	2nd
McCracken (65,514)	Lone Oak	454	COMM	6th
McCreary(17,080)	Whitley City(unincorp)			
McLean	Island	435		6th
McLean	Livermore	1,482	MC	5th
McLean	Sacramento	517		6th
McLean (9,938)	Calhoun	836	MC	5th
Meade	Ekron	170		6th
Meade	Muldraugh	1,298	MC	5th
Meade (26,349)	Brandenburg	2,049	MC	5th
Menifee (6,556)	Frenchburg	551	COMM	6th
Mercer	Harrodsburg	8,014	COMM	4th
Mercer (20,817)	Burgin	874	MC	5th
Metcalfe (10,037)	Edmonton	1,586	MC	5th
Monroe	Gamaliel	439	MC	6th
Monroe	Tompkinsville	2,660	MC	5th
Monroe (11,756)	Fountain Run	236		6th
Montgomery	Jeffersonville	1,804	MC	5th
Montgomery	Mount Sterling	5,876	MC	4th
Montgomery (22,554)	Camargo	923	MC	5th
Morgan (13,948)	West Liberty	3,277	MC	4th
Muhlenburg	Central City	5,893	MC	4th
Muhlenburg	Drakesboro	627	MC	5th
Muhlenburg	Greenville	4,398	MC	4th
Muhlenburg	Powderly	846	MC	5th
Muhlenburg	South Carrollton	184	MC	6th
Muhlenburg (31,839)	Bremen	365	MC	6th
Nelson	Bloomfield	855		5th
Nelson	Fairfield	72		6th
Nelson	New Haven	849	COMM	6th
Nelson (37,477)	Bardstown	10,374	MC	4th
Nicholas (6,813)	Carlisle	1,917	MC	4th
Ohio	Centertown	416	Comm	6th
Ohio	Fordsville	531	MC	6th
Ohio	Hartford	2,570	MC	5th
Ohio	McHenry	417	MC	6th
Ohio	Rockport	334	MC	6th

Ohio (22,916)	Beaver Dam	3,033	COMM	4th
Oldham	Goshen	907		6th
Oldham	La Grange	5,676	MC	4th
Oldham	Orchard Grass Hills	1,031	MC	5th
Oldham	Park Lake	537		6th
Oldham	Peewee Valley	1,436	MC	5th
Oldham	River Bluff	402		6th
Oldham (46,178)	Crestwood	1,999		5th
Owen	Monterey	167		6th
Owen	Owenton	1,387	MC	5th
Owen (10,547)	Gratz	89		6th
Owsley (4,858)	Booneville	111	COMM	6th
Pendleton	Falmouth	2,058	MC	4th
Pendleton (14,390)	Butler	613	COMM	5th
Perry	Buckhorn	144		6th
Perry	Vicco	318		6th
Perry (29,390)	Hazard	4,806	CM	3rd
Pike	Elkhorn City	1,060	MC	4th
Pike	Pikeville	6,295	CM	3rd
Pike (68,736)	Coal Run Village	577	COMM	6th
Powell	Stanton	3,029	MC	4th
Powell (13,327)	Clay City	1,303	MC	5th
Pulaski	Eubanks	358	COMM	6th
Pulaski	Ferguson	881	MC	5th
Pulaski	Science Hill	634	MC	6th
Pulaski	Somerset	11,352	MC	3rd
Pulaski (56,217)	Burnside	637	MC	5th
Robertson (2,266)	Mt. Olivet	289	MC	5th
Rockcastle	Livingston	228		6th
Rockcastle	Mt. Vernon	2,592	MC	5th
Rockcastle (16,582)	Brodhead	1,193		5th
Rowan	Morehead	5,914	MC	4th
Rowan (22,094)	Lake View Heights	301	COMM	6th
Russell	Russell Springs	2,399	MC	5th
Russell (16,315)	Jamestown	1,624	MC	5th
Scott	Sadieville	263	COMM	6th
Scott	Stamping Ground	566	MC	6th
Scott (33,061)	Georgetown	18,080	MC	4th
Shelby	Simpsonville	1,281	MC	5th
Shelby (33,337)	Shelbyville	10,085	MC	4th
Simpson (16,405)	Franklin	7,996	MC	4th
Spencer (11,766)	Taylorsville	1,009	MC	6th
Taylor (22,927)	Campbellsville	10,498	MC	3rd
Todd	Guthrie	1,469	MC	4th
Todd	Trenton	419		6th

Todd (11,971)	Elkton	1,984	MC	4th
Trigg (12,597)	Cadiz	2,373	MC	5th
Trimble	Milton	525		6th
Trimble (8,125)	Bedford	677	MC	6th
Union	Sturgis	2,030	MC	4th
Union	Union Town	1,064	MC	5th
Union	Waverly	297	COMM	6th
Union (15,637)	Morganfield	3,494	MC	4th
Warren	Oakland	260	MC	6th
Warren	Plum Springs	447		6th
Warren	Smith's Grove	784	COMM	5th
Warren	Woodburn	323	MC	6th
Warren (82,522)	Bowling Green	49,296	CM	2nd
Washington	Springfield	2,634	MC	4th
Washington	Willisburg	304	MC	6th
Washington (10,916)	Mackville	200		6th
Wayne (19,923)	Monticello	5,981	MC	4th
Webster	Dixon	532	COMM	6th
Webster	Providence	3,611	MC	4th
Webster	Sebree	1,558	MC	5th
Webster	Slaughters	238	MC	6th
Webster	Wheatcroft	173		6th
Webster (14,120)	Clay	1,179	MC	5th
Whitley	Williamsburg	6,074	MC	4th
Whitley (35,865)	Corbin	7,742	CM	3rd
Wolfe (7,065)	Campton	424	COMM	6th
Woodford	Versailles	7,511	MC	4th
Woodford (23,208)	Midway	1,620	MC	5th